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PAGES
9589-9731

federal register

WEDNESDAY, FEBRUARY 14, 1979

highlights

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202-523-5240.**

HIGHLIGHTS—Continued

contents

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR

905 9589

14 CFR

291 9590

24 CFR

PROPOSED RULES:

201 (2 documents) 9597
501 9700
806 (2 documents) 9700

25 CFR

PROPOSED RULES:

258 9598

29 CFR

PROPOSED RULES:

2618 9603

33 CFR

222 9591

40 CFR

PROPOSED RULES:

65 (2 documents) 9603, 9604

42 CFR

PROPOSED RULES:

463 9605

43 CFR

3830 9720
3833 9720

45 CFR

PROPOSED RULES:

114 9726

46 CFR

502 9593

49 CFR

1201 9730

50 CFR

PROPOSED RULES:

23 9690
230 9608

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING FEBRUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during February.

FEDERAL REGISTER PAGES AND DATES—FEBRUARY

Pages	*Date*	*Pages*	*Date*
6347-6704	Feb. 1	7937-8237	8
6705-6892	2	8239-8858	9
6893-7102	5	8859-9365	12
7103-7649	6	9367-9587	13
7451-7935	7	9589-9731	14

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list, has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

HUD/GNMA—List of attorneys-in-fact (3 documents) 3035, 3036; 1-15-79

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
- Milk marketing orders; Iowa marketing area; comments by 2-20-79 ..... 5887; 1-30-79
- Onions grown in South Texas; comments by 2-20-79 ..... 59509; 12-21-78

Commodity Credit Corporation—
- Milk, terms and conditions of 1978-79 price support program; comments by 2-26-79 ..... 5147; 1-25-79

Federal Crop Insurance Corporation—
- Wheat crop insurance regulations; comments by 2-22-79 ..... 4687; 1-23-79

Food and Nutrition Service—
- Special Supplemental Food Program for Women, Infants, and Children; changes in requirements; comments by 2-23-79 ..... 2114; 1-9-79

CIVIL AERONAUTICS BOARD

Rules of conduct in Board proceedings; comments by 2-23-79 ..... 4701; 1-23-79

CONSUMER PRODUCT SAFETY COMMISSION

Cellulose insulation; comments by 2-20-79 ..... 59390; 12-20-78

ENERGY DEPARTMENT

Economic Regulatory Administration—
- Mandatory petroleum price regulations; comments by 2-22-79 ..... 59810; 12-21-78

Federal Energy Regulatory Commission—
- Certain sales of natural gas by Intrastate Pipelines; comments by 2-21-79. 7976; 2-8-79

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; approval of delayed compliance orders:
- Connecticut; New Haven Trap Rock-Tomasso; comments by 2-20-79 .... 3996; 1-19-79
- North Carolina; Columbus Forest Industries; comments by 2-22-79 ..... 4735; 1-23-79
- North Carolina; Duke Power Co.; comments by 2-22-79 (2 documents) 4736, 4738; 1-23-79
- Ohio; General Motors Corp; comments by 2-22-79 ..... 4734; 1-23-79

Air quality implementation plans, various States:
- Texas; comments by 2-20-79 ..... 3739; 1-18-79
- Federal Pesticide Act of 1978; implementation plan and preliminary solicitation of views; comments by 2-21-79 ..... 4352; 1-19-79
- New Mexico Regulation 402; woodwaste burners; comments by 2-22-79 .. 4734; 1-23-79

Pesticide chemicals in or on raw agricultural commodities; exemption from requirement of tolerance for chlorotoluene; comments by 2-22-79 ..... 4740; 1-23-79

Pesticide chemicals in or on raw agricultural commodiites; tolerance for gibberellins; comments by 2-22-79 ..... 4740; 1-23-79

Pesticide chemicals in or on raw agricultural commodities, tolerances and exemptions; 6-Benzyladenine; comments by 2-20-79 ..... 3740; 1-18-79

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Affirmative Action appropriate under Title VII of the Civil Rights Act of 1964, as amended, adoption of interpretative guidelines; comments by 2-20-79 ..... 4422; 1-19-79

FEDERAL COMMUNICATIONS COMMISSION

FM broadcast stations; table of assignments: Stamps, Ark.; reply comments by 2-19-79 ..... 58099; 12-12-78

Franchising and business opportunity ventures; disclosure requirements and prohibitions; comments by 2-20-79 59614; 12-21-78

Protection of FCC monitoring stations, from radio interference; reply comments by 2-21-79 ..... 54106; 11-20-78

Regulation of domestic receive-only satellite earth stations; comments by 2-23-79. 6755; 2-2-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
- Canned pears; revision of standard of quality; comments by 2-23-79 .... 1983; 1-9-79
- New drugs; antibiotic drugs; separation of functions in evaluating requests for hearing; comments by 2-20-79 ..... 59095; 12-19-78
- Nonfat dry milk, lowfat dry milk, dry whole milk, and dry cream; standards of identity; objections by 2-20-79 ..... 3964; 1-19-79
- Recombinant DNA; compliance with NIH research guidelines; comments by 2-20-79 ..... 60134; 12-22-78

Public Health Service—
- Grants for allied health projects; comments by 2-20-79 ..... 59530; 12-21-78

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner—
- PHA—Owned Projects—Project management, utility allowances; comments by 2-20-79 ..... 1600; 1-5-79

INTERIOR DEPARTMENT

Fish and Wildlife Service—
- Manatee protection area; establishment; comments by 2-22-79 ..... 4745; 1-23-79
- Refuge Revenue Sharing Act; participation of local governments in revenue from areas administered; comments by 2-20-79 ..... 3999; 1-19-79

Land Management Bureau—
- Special recreation permits—allocations and transfers; comments by 2-23-79. 4501; 1-22-79
- [Originally published at 43 FR 57167; 12-6-78]

INTERSTATE COMMERCE COMMISSION

Interpretation of commodity descriptions; motor vehicle descriptions; comments by 2-23-79 ..... 1994; 1-9-79

LABOR DEPARTMENT

Employment and Training Administration—
- Comprehensive Employment and Training Act; regulations for programs under Titles I, II, VI, and VII of the Act; comments by 2-19-79 ..... 4364; 1-19-79

NATIONAL CREDIT UNION ADMINISTRATION

Federal Credit Unions; amortization and payment of loans to members; comments by 2-24-79 ..... 5900; 1-30-79

Federal Credit Unions; borrowed funds from natural persons; comments by 2-23-79. 58096; 12-12-78

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Commission operations and relocation procedures, regulations concerning eligibility for relocation benefits; comments by 2-22-79 ..... 59400; 12-20-78

PRESIDENT'S COMMISSION ON PENSION POLICY

Privacy Act of 1974, implementation; comments by 2-21-79 ..... 4496; 1-22-79

SECURITIES AND EXCHANGE COMMISSION

Exchange-traded options markets; unfair discrimination prohibitions against public orders; comments by 2-21-79 ..... 4703; 1-23-79

Investment trusts, unit; start-up exemptions and pricing of investment company shares; comments by 2-23-79 ..... 3376; 1-16-79

TRANSPORTATION DEPARTMENT

Office of the Secretary—
Consolidation of grants to U.S. insular areas; comments by 2-22-79 ..... 1765; 1-8-79

Urban Mass Transportation Administration—
Reporting requirements for urbanized areas; comments by 2-18-79. 58928; 12-18-78—4493; 1-22-79

TREASURY DEPARTMENT

Internal Revenue Service—
Estate tax elections procedure; comments by 2-20-79 ..... 59517; 12-21-78
Excise taxes, private foundations; treatment of imputed interest on contracts; comments by 2-20-79 ..... 59518; 12-21-78
Generation-skipping transfers; effective date provisions of new tax; comments by 2-20-79 ..... 59849; 12-22-78

Next Week's Meetings

AGRICULTURE DEPARTMENT

Forest Service—
Flue-Cure Tobacco Advisory Committee, Raleigh, N.C. (open), 2-21-79 ..... 6964; 2-5-79
Modoc National Forest Grazing Advisory Board, Alturas, Calif. (open), 2-22-79. 6485; 2-1-79
National Forest System Advisory Committee, Washington, D.C. (open), 2-20 and 2-21-79 ..... 5697; 1-29-79

Office of the Secretary—
Gospel-Hump Advisory Committee, Grangeville, Idaho (open), 2-22-79. 2408; 1-11-79

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Architecture, Planning, and Design Advisory Panel, Washington, D.C. (closed) 2-22 and 2-23-79 ..... 6523; 2-1-79
Humanities National Council, Washington, D.C. (partially open), 2-22 and 2-23-79 ..... 6993; 2-5-79

CIVIL RIGHTS COMMISSION

Delaware Advisory Committee, Dover, Del. (open), 2-23-79 ..... 2001; 1-9-79
Illinois Advisory Committee, Chicago, Ill. (open), 2-20-79 ..... 5185; 1-25-79
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin Advisory Committees, Chicago, Ill. (open), 2-20-79 ..... 4749; 1-23-79
New Hampshire Advisory Committee, Manchester, N.H. (open), 2-20-79 ..... 6967; 2-5-79
Ohio Advisory Committee, Cincinnati, Ohio (open), 2-23-79 ..... 6967; 2-5-79
Ohio Advisory Committee, Cincinnati, Ohio (open), 2-24-79 ..... 5697; 1-29-79

COMMERCE DEPARTMENT

Industry and Trade Administration—
Semiconductor Technical Advisory Committee, Washington, D.C. (partially open), 2-22 and 2-23-79 ..... 7789; 2-7-79

National Oceanic and Atmospheric Administration—
Fishermen's Contingency Fund, Anchorage, Alaska (open), 2-21-79..... 5165; 1-25-79
Fishermen's Contingency Fund, Terminal Island, Calif., 2-23-79 ..... 7777; 2-7-79
Gulf of Mexico Fishery Management Council Groundfish Advisory Subpanel, Kenner, La. (open), 2-21-79 ..... 4994; 1-24-79
Pacific Fishery Management Council's Billfish Advisory Subpanel and Plan Development Team, Long Beach, Calif. (open), 2-22-79 ..... 5487; 1-26-79

DEFENSE DEPARTMENT

Air Force Department—
USAF Scientific Advisory Board, Washington, D.C. (closed), 2-20 and 2-21-79..... 5487; 1-26-79

Army Department—
Army Science Board, Ft. Ord, Calif. (partially closed), 2-20 and 2-21-79. 5699; 1-29-79

Office of the Secretary—
Defense Science Board Task Force on Enduring Strategic Communications, Command and Control and Intelligence, Colorado Springs, Colo. (closed), 2-23-79..... 5928; 1-30-79
Defense Science Board Task Force on Enduring Strategic Communications, Command and Control and Intelligence, Omaha, Nebr. (closed), 2-21 and 2-22-79..... 5928; 1-30-79
Defense Science Board Task Force on EMP Hardening of Aircraft, Washington, D.C. (closed), 2-2 and 2-23-79... 6176; 1-31-79
Electron Devices Advisory Group, Working Group B, Arlington, Va. (closed), 2-21 and 2-22-79 ..... 59871; 12-22-78
Wage Committee, Washington, D.C. (closed), 2-20-79 ..... 59421; 12-20-78

ENERGY DEPARTMENT

Conservation and Solar Applications, Food and Industry Advisory Committee, San Francisco, Calif. (open) 2-21-79 .... 6766; 2-2-79
Industrial energy conservation workshop, San Francisco, Calif. (open), 2-22 and 2-23-79..... 48682; 10-19-78
National Petroleum Council's Committee on Refinery Flexibility, Refinery Capability Task Group, Washington, D.C. (open), 2-23-79 ..... 4523; 1-22-79

Federal Energy Regulatory Commission—
NARUC conference, Washington, D.C. (open), 2-20-79 ..... 6133; 1-31-79

ENVIRONMENTAL PROTECTION AGENCY

National Drinking Water Advisory Council, Washington, D.C. (open), 2-22 and 2-23-79 ..... 5198; 1-25-79
Science Advisory Board, Subcommittee on Mobile Sources, Arlington, Va. (open), 2-20 and 2-21-79..... 5199; 1-25-79

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services, Special Committee No. 73, Washington, D.C. (open), 2-22-79. 5940; 1-30-79

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Washington, D.C. (open), 2-22-79..... 3573; 1-17-79

FEDERAL RESERVE SYSTEM

Consumer Advisory Council, Washington, D.C. (open), 2-21 and 2-22-79 ..... 7230; 2-6-79

GENERAL SERVICES ADMINISTRATION

Regional Public Advisory Panel on Architectural and Engineering Services, Washington, D.C. (open), 2-20-79... 6518; 2-1-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—
Rape Prevention and Control Advisory Committee, Rockville, Md. (open), 2-20 and 2-21-79 ..... 3314; 1-16-79

Education Office—
Education of Disadvantaged Children National Advisory Council, Alexandria, Va. (open), 2-23 and 2-24-79. 4757; 1-23-79
President's Commission on Foreign Language and International Studies, Monterey, Calif. (open), 2-24-79. 7814; 2-7-79

Food and Drug Administration—
Neurological Devices Section of the Respiratory and Nervous System Devices Panel, Washington, D.C. (open), 2-23-79..... 3314; 1-16-79

Human Development Services Office—
Federal Council on the Aging, Long Term Care Committee, Washington, D.C. (open), 2-20-79 ..... 5945; 1-30-79

National Institutes of Health—
Artificial Kidney Chronic Uremia Advisory Committee, Bethesda, Md. (open), 2-21-79..... 1799; 1-8-79
Bacteriology and Mycology Research Grants Study Section, Bethesda, Md. (partially open), 2-22 thru 2-24-79. 2023; 1-9-79
Cancer Control Merit Review Committee of the National Cancer Institute, Silver Spring, Md. (open), 2-23-79. 6784; 2-2-79
Cancer Education Workshop, Bethesda, Md. (open), 2-22 and 2-23-79. 5002; 1-24-79
Cardiovascular and Renal Research Grants Study Section, Bethesda, Md. (partially open), 2-21 thru 2-24-79. 2023; 1-9-79
Epidemiology and Disease Control Research Grants Study Section, Bethesda, Md. (partially open), 2-21 thru 2-23-79..... 2023; 1-9-79
Federal Clinical Research Centers Committee, Bethesda, Md. (partially open), 2-22 and 2-23-79 ..... 2022; 1-9-79
Hematology Research Grants Study Section, Washington, D.C. (partially open), 2-22 thru 2-24-79..... 2023; 1-9-79
Medicinal Chemistry (A) Research Grants Study Section, Chevy Chase, Md. (partially open), 2-22 thru 2-25-79. 2023; 1-9-79
Microbial Chemistry Research Grants Study Section, Bethesda, Md. (partially open), 2-21 thru 2-23-79 2023; 1-9-79

Molecular Biology Research Grants Study Section, Bethesda, Md. (partially open), 2-21 thru 2-24-79 ..... 2023; 1-9-79
National Cancer Institute advisory committees, Bethesda, Md. (partially open), 2-20, 2-22 and 2-23-79 ..... 5003; 1-24-79
National Institute of Allergy and Infectious Diseases Symposium on Potentiation of Immune Respone to Vaccines, Bethesda, Md. (open), 2-20 and 2-21-79 ..... 57979; 12-11-78
Neurology (B) Research Grants Study Section, Washington, D.C. (partially open), 2-21 thru 2-24-79 ..... 2023; 1-9-79
Oral Biology and Medicine Research Grants Study Section, Bethesda, Md. (partially open), 2-20 thru 2-23-79. 2023; 1-9-79
Pathology (B) Research Grants Study Section, Bethesda, Md. (partially open), 2-21 thru 2-23-79 ..... 2023; 1-9-79
Physiological Chemistry Research Grants Study Section, Bethesda, Md. (partially open), 2-22 thru 2-24-79 ..... 2024; 1-9-79
Physiology Research Grants Study Section, Bethesda, Md. (partially open), 2-22 thru 2-24-79 ..... 2023; 1-9-79
Reproductive Biology Research Grants Study Section, Chevy Chase, Md. (partially open), 2-20 thru 2-23-79. 2023; 1-9-79
Surgery, Anesthesioloy and Trauma Research Grants Study Section, Arlington, Va. (partially open), 2-22 and 2-23-79..... 2023; 1-9-79

INTERIOR DEPARTMENT

Land Management Bureau—
Arizona; Crossman Peak Radar Facility proposal, Lake Havasu City, Ariz. (open), 2-22-79..... 3574; 1-17-79
Proposed mining and wilderness management policy, Klamath Falls, Oregon, 2-23-79..... 6481, 2-1-79
Proposed mining and wilderness management policy, Lakeview, Oregon, 2-21-79..... 6481, 2-1-79
Proposed mining and wilderness management policy, Portland, Oregon, 2-24-79..... 6481, 2-1-79
National Park Service—
Golden Gate National Recreation Area Advisory Commission, Mill Valley, Calif. (open), 2-24-79 ..... 5729; 1-29-79
Pictured Rocks National Lakeshore Advisory Commission, Munising, Mich. (open), 2-24-79 ..... 5729; 1-29-79

JUSTICE DEPARTMENT

Southern Ninth Circuit Panel of the United States Circuit Judge Nominating Commission; Pheonix, Arizona (closed), 2-24-79..... 6789; 2-2-79
United States Circuit Judge Nominating Commission; District of Columbia Panel, Washington, D.C. (closed), 2-20-79. 58434; 12-14-78
United States Circuit Judge Nominating Commission; First Circuit Panel, Boston, Mass. (closed), 2-23 and 2-24-79. 3102; 1-15-79
Law Enforcement Assistance Administration—
National Advisory Committee for Juvenile Justice and Delinquency Prevention, San Diego, Calif. (open), 2-21 through 2-24-79..... 8040; 2-8-79

LABOR DEPARTMENT

Labor Statistics Bureau—
Business Research Advisory Council, Washington, D.C. (open), 2-21-79. 7240; 2-6-79
Business Research Advisory Council's Committee on Manpower and Employment, Washington, D.C. (open), 2-20-79..... 5530; 1-26-79
Business Research Advisory Council's Committee on Price Indexes, Washington, D.C. (open), 2-20-79 6789; 2-2-79
Pension and Welfare Benefit Programs—
Employee Welfare and Pension Benefit Plans Advisory Council, Washington, D.C. (partially open), 2-21-79 ..... 7242; 2-6-79

LIBRARY OF CONGRESS

American Folklife Center, Board of Trustees, Washington, D.C. (open) 2-23-79 .. 6814; 2-2-79

NATIONAL SCIENCE FOUNDATION

Electrical Sciences and Analysis of the Advisory Committee for Engineering, Washington, D.C. (partially open), 2-20 and 2-21-79 ..... 6816; 2-2-79
Information Science and Technology Advisory Committee, Washington, D.C. (open), 2-22 and 2-23-79 ..... 6815; 2-2-79
Molecular Biology Subcommittee, Washington, D.C. (closed), 2-22 and 2-23-79 ..... 6815; 2-2-79
Sensory Physiology and Perception Subcommitting, Washington, D.C. (closed), 2-21 and 2-22-79 ..... 6815; 2-2-79
Social and Developmental Psychology Subcommittee, Washington, D.C. (closed), 2-22 and 2-23-79 ..... 6816; 2-2-79

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

Washington, D.C. (open), 2-22-79..... 7851; 2-7-79

NUCLEAR REGULATORY COMMISSION

Reactor Safeguards Advisory Committee, Spent Fuel Storage Subcommittee, Washington, D.C. (partially open) 2-23-79. 8041; 2-8-79

SMALL BUSINESS ADMINISTRATION

Small business and industrial innovation, Washington, D.C. (open), 2-22 and 2-23-79..... 7857; 2-7-79

STATE DEPARTMENT

Agency for International Development—
Board for International Food and Agricultural Development, Washington, D.C. (open), 2-22-79 ..... 6541; 2-1-79
Office of the Secretary—
Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, New York, N.Y. (open), 2-22-79..... 8050; 2-8-79
Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR), Washington, D.C. (open), 2-21-79 ..... 5040; 1-24-79

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—
Development of Active Beacon Collision Avoidance System Technical Status, Lexington, Mass., 2-21-79 ..... 5740; 1-29-79
Radio Technical Commission for Aeronautics (RTCA); Special Committee 132—Airborne Audio Systems and Equipment, Washington, D.C. (open), 2-21 through 2-23-79..... 5740; 1-29-79
Federal Railroad Administration—
Minority Business Resource Center Advisory Committee, Miami, Fla. (open), 2-23-79..... 7262; 2-6-79
National Highway Traffic Safety Administration—
Safety, Bumper, and Consumer Information Programs, Ann Arbor, Mich. (open), 2-21-79. 60691; 12-28-78—1813; 1-8-79

WOMEN, NATIONAL ADVISORY COMMITTEE

Washington, D.C., 2-20 and 2-21-79. 6813; 2-2-79

Next Week's Public Hearings

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—
Mid-Atlantic and New England Fishery Management Councils; draft environmental assessment for the Fishery Management Plan for Surf Clam and Ocean Quahog Fisheries, 2-20, Cape May, N.J.; 2-21, Norfolk, Va. and Tinton Falls, N.J.; 2-22, Newport, R.I.; and 2-23-79, Ocean City, Md 6961; 2-5-79

ENERGY DEPARTMENT

Electric and Hybrid Vehicles; Research, Development, Demonstration, and Production Loan Guaranties, Washington, D.C., 2-20-79 ..... 4418; 1-19-79
Economic Regulatory Administration—
Powerplant and Industrial Fuel Use Act of 1978, implementation, Tampa, Fla., 2-21-79..... 3721; 1-18-79
Powerplant and Industrial Fuel Use Act of 1978, implementation; Tampa, Fla., 2-21 and 2-22-79 ..... 5808; 1-29-79
Energy Research Office—
University Coal Research Laboratories Program; policies and procedures; Washington, D.C., 2-23-79 ..... 4632; 1-22-79

ENVIRONMENTAL PROTECTION AGENCY

Hazardous guidelines and provisions, Washington, D.C., 2-20 through 2-22-79. 58946; 12-18-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—
President's Commission on Foreign Language and International Studies, San Francisco, Calif. (open), 2-23-79. 7814; 2-7-79

INTERNATIONAL TRADE COMMISSION

Proceeding on certain cattle whips, Washington, D.C. 2-20-79 ..... 2206; 1-10-79

TRANSPORTATION DEPARTMENT

Federal Railroad Administration—

General safety inquiry, Washington, D.C., rescheduled for 2-21 and 2-22-79. 925; 1-3-79

[First published at 43 FR 58100, 12-12-78]

List of Public Laws

NOTE: No public laws have been received by the Office of the Federal Register for assignment of law numbers and inclusion in today's listing.

[Last Listing Jan. 24, 1979]

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Deadlines for Comments on Proposed Rules:

DOT/FHWA—Design and construction standards for bikeway construction projects; comments by 4-9-79. 7979; 2-8-79

Applications Deadlines

HEW/OE—Basic Educational Opportunity Grant Program regulations; apply by 3-15-79; supplemental forms by 3-15-79; corrected applications due by 5-5-79; requests for recomputation of expected family contribution because of clerical or arithmetic errors due by 5-5-79; student eligibility reports due by various dates in May, June, and July 1979 ..... 8018; 2-8-79

Secy—Fund for the Improvement of Postsecondary Education; fiscal year 1979; applications closing date extended to 5-21-79 ..... 8020; 2-8-79

Meetings:

HEW/NIH—Aging Review Committee, Bethesda, Md. (closed), 3-22 and 3-23-79 ..... 7815; 2-7-79

Animal Resources Review Committee, Bethesda, Md. (partially open), 3-14-79. 7816; 2-7-79

Biomedical Library Review Committee, Bethesda, Md. (partially open), 3-14 and 3-15-79 ..... 7816; 2-7-79

OE—Financial assistance to local educational agencies to meet special educational needs of educationally deprived and neglected and delinquent children, evaluation requirements:

Boston, Mass. (open), 3-9-79 ..... 7914; 2-7-79

Atlanta, Ga. (open), 3-12-79 ..... 7914, 2-7-79

Kansas City, Mo. (open), 3-14-79 7914; 2-7-79

San Francisco, Calif. (open), 3-16-79. 7914; 2-7-79

Justice/LEAA—Juvenile Justice and Delinquency Prevention National Advisory Committee, San Diego, Calif. (open), 2-21 through 2-24-79 ..... 8040; 2-8-79

NFAH—Humanities Panel Advisory Committee, Washington, D.C. (closed), 2-27 and 2-28-79 ..... 7846; 2-7-79

Literature Advisory Panel, Washington, D.C. (closed), 3-3-79 ..... 8389; 2-9-79

Visual Arts Panel (Visual Arts in the Performing Arts), Washington, D.C. (closed), 3-1-79 ..... 8389; 2-9-79

NSF—Advisory Council Task Group No. 6, Washington, D.C. (open), 2-28-79. 8389; 2-9-79

Behavioral and Neural Sciences Advisory Committee, Memory and Cognitive Processes Subcommittee, San Diego, Calif. (closed), 2-26 and 2-27-79 ..... 8390; 2-9-79

DOE/NSF Nuclear Science Advisory Committee, 1979 Facilities Subcommittee, Washington, D.C. (closed), 3-2 and 3-3-79 ..... 8389; 2-7-79

Physiology, Cellular and Molecular Biology, Cell Biology Subcommittee, Washington, D.C. (closed), 2-26 through 2-28-79. 8390; 2-9-79

Social Sciences Advisory Committee, Geography and Regional Science Subcommittee, Washington, D.C. (closed), 2-26-79 ..... 8390; 2-9-79

Social Sciences Advisory Committee, Political Science Subcommittee, Washington, D.C. (closed), 2-26 and 2-27-79 ..... 8390; 2-9-79

USDA/FMHA—Self-Help Technical Assistance Grant regulations, Washington, D.C. (open), 3-1-79 ..... 7971; 2-8-79

Other Items of Interest

HEW/PHS—Statement of organization and functions for National Institutes of Health 7234; 2-6-79

Justice/LEAA—State planning agency grants; comments received and changes made; issuance, distribution, and availability of final change 4 ..... 6992; 2-5-79

rules and regulations

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 2, Amdt. 10]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers to Florida No. 1 Golden the minimum grade requirement on domestic and export shipments of fresh Florida Honey Tangerines, during the period February 9 through October 14, 1979. Grade requirements for other varieties of tangerines remain unchanged. Currently, the minimum grade for domestic and export shipments of Honey Tangerines is Florida No. 1. The change in minimum grade is necessary because of current and prospective supply and demand for the fruit and to maintain orderly marketing conditions in the interest of producers and consumers.

EFFECTIVE DATES: February 9 through October 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* (1) Pursuant to the marketing agreement and Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the recommendations of the committee established under the marketing agreement and order, and upon other available information, it is found that the regulation of Honey Tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

(2) This amendment reflects the Department's appraisal of the current and prospective supply and market demand conditions for Florida Honey Tangerines. It is designed to assure an ample supply of acceptable quality Honey Tangerines to consumers consistent with the quality of the crop.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act; and this amendment relieves restrictions on the handling of Honey Tangerines.

Accordingly, it is found that the provisions of § 905.302 (43 FR 43013; 52197; 53027; 54617; 57139; 58175; 58353; 59335; and 44 FR 6349) should be and are hereby amended by revising Table I, paragraph (a) applicable to domestic shipments, and Table II, paragraph (b) applicable to export shipments, to read as follows:

§ 905.302 Orange, Grapefruit, Tangerine, and Tangelo Regulation 2.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 9 through Oct. 14, 1979	Florida No. 1 Golden	2⅛

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 9 through Oct. 14, 1979	Florida No. 1 Golden	2⅛

* * * * * * *

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674.))

Dated: February 9, 1979.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-4872 Filed 2-13-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Regulation ER-1103; Amdt. 3]

PART 291—GENERAL RULES FOR ALL-CARGO CARRIERS

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is amending, on its own initiative, its regulations exempting persons involved in domestic cargo transportation from section 408(a) of the Federal Aviation Act. The amendment is to make clear that transactions by international cargo carriers are included within the exemption to the same extent as those by domestic cargo carriers.

DATES: Effective: March 15, 1979. Adopted: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 7, 1979.

In ER-1080, effective November 9, 1978 (43 FR 53628, November 16, 1978), the Board issued comprehensive regulations implementing Public Law 95-163, which deregulated the domestic all-cargo air transportation industry. To equalize competitive conditions in all portions of the industry as much as possible, the rule applied to all domestic cargo carriers, whether they operated all-cargo aircraft only under a section 418 certificate (providing authority for domestic operations), combination aircraft under a section 401 certificate, or all-cargo aircraft in addition to other passenger and/or international cargo operations under a section 401 certificate. To the greatest extent feasible, all domestic cargo operations were made subject to the same rules, so that there would be no greater regulatory burden on a carrier that provides domestic cargo service in combination with other operations than on a carrier that provides domestic cargo service exclusively.

The new rules were contained in a revised 14 CFR Part 291. Sections 291.31(e) and 291.32 granted exemptions from the antitrust provisions of the Federal Aviation Act (section 408(a)) dealing with consolidations, mergers, and acquisitions of control. The Board intended by this exemption to free the domestic cargo industry from mandatory Board approval of acquisitions. Instead, the industry will be subject to the general public antitrust laws, as § 291.35 makes clear.

Because many carriers do not limit themselves to cargo operations, the exemption applied by its terms only to "direct air carrier[s] providing domestic cargo transportation, * * * with respect to such transportation." Thus, transactions between any person and an all-cargo carrier operating solely under a section 418 certificate (conferring authority for domestic cargo operations only) are totally exempt, as the section 418 operator is engaged only in domestic cargo service. On the other hand, an acquisition of a carrier with both passenger and cargo authority by a carrier with like authority is not exempt, even though both carriers are involved in domestic cargo transportation, because the transaction involves passenger operations over which the Board has not relinquished authority. Since the exemption was restricted to domestic cargo activities, transactions involving international cargo activities were not exempted.

By excluding international cargo activities from the exemption, however, we have unintentionally put some section 401 carriers at a competitive disadvantage in their domestic cargo operations. Under the rule as originally adopted, section 418 operators are completely free of CAB antitrust regulations. Consequently, they may without Board approval integrate their operations with air freight forwarders, common carriers other than air carriers, or persons substantially engaged in the business of aeronautics other than as air carriers. Section 401 operators, in contrast, are free of CAB regulation only to the extent that their transactions involve domestic cargo service. Therefore, they cannot vertically integrate their cargo operations with freight forwarders, ground carriers, or others substantially engaged in aeronautics unless the acquired person happens to be engaged solely in domestic cargo transportation. Thus, section 418 operators can acquire air freight forwarders with both domestic and international authority, while section 401 operators cannot. The same difference exists for acquisitions of ground carriers and others mentioned above. This gives section 418 operators better opportunities than section 401 operators have to integrate their cargo operations vertically.

The Board did not intend to give section 418 operators this advantage. We are therefore revising the exemption language to provide that all-cargo transactions, whether they involve domestic or international operations, are exempt from section 408(a). The Board will retain control over acquisitions that might seriously affect international cargo transportation by means of the notification procedure in § 291.33. Through that procedure, the Board must be notified of transactions between certificated carriers, where at least one is involved in international cargo operations, before the transactions become effective, so that it may invoke its jurisdiction over the matter if it wishes. The exemption is thus qualified, and subject to the notification provision.

The exemption does not apply to transactions affecting passenger operations. Since carriers operating exclusively under a section 418 certificate are engaged solely in cargo operations, any transaction between a section 418 carrier and a section 401 passenger carrier will not be considered to affect passenger transportation. However, the activities of any person controlled by another person will be attributed to the controlling person, so that a section 418 carrier controlling a passenger carrier will be considered to be engaged in passenger operations. Thus, the first acquisition of a passenger carrier by a section 418 carrier would be exempt. But further acquisitions of passenger carriers would not be exempt, because the section 418 carrier would be considered engaged in passenger operations after the first acquisition.

Sections 291.31, 291.32, and 291.33 have been revised by this issuance, and the headings for § 291.31 and § 291.32 have been changed for accuracy and clarity. The exemption itself has been restated separately in § 291.31(b), instead of being included with exemptions from other sections of the Act. This treatment allows more specific and accurate language.

The purpose of § 291.32 has not been changed. It is intended to make clear that if the acquisition of A by B is exempted by § 291.31, then the acquisition of B by A is also exempted. It has also been reworded to eliminate the unnecessary and confusing distinction between transactions involving assets and transactions involving securities.

Section 291.33 has been reworded to fit the changes in § 291.31. Any transaction between certificated carriers (including section 418 carriers), one of which has international cargo authority, is subject to the notification provision.

EFFECTIVENESS

This issuance rephrases ER-1080 to state more clearly the Board's intended action with respect to antitrust exemptions for air cargo transportation. It does not present any new issues. The public had opportunity to comment, and did comment, on the scope and wording of the exemption from

section 408(a), and this amendment takes those comments into account. Therefore, the Board finds that notice and public procedure on the present amendment are unnecessary. The changes will become effective March 16, 1979.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 291 as follows:

1. The Table of Contents for Subpart D of Part 291 is amended to read:

Subpart D—Exemptions for Domestic Cargo Transportation

* * * * *

Sec.
291.31 Exemptions from the Act for direct air carriers.
291.32 Exemptions from the Act for persons other than direct air carriers.

* * * * *

2. Section 291.31 is revised to read:

§ 291.31 Exemptions from the Act for direct air carriers.

(a) Each direct air carrier providing domestic cargo transportation is, with respect to such transportation, exempted from the following section or subsections of the Act:

(1) Section 403, with the following exceptions:

(i) Air transportation of property within the States of Alaska or Hawaii; and

(ii) To the extent necessary, as provided in Part 222 of this title, tariffs for pickup and delivery services not otherwise provided for in domestic cargo transportation.

NOTE.—Tariffs already on file with the Board may remain in effect for not longer than 90 days after the effective date of this rule.

(2) Subsection 404(a), except for air transportation of property within the States of Alaska or Hawaii, and (for all domestic cargo transportation) except the requirement to provide safe and adequate service, equipment, and facilities in connection with that transportation.

(3) Section 405 for all-cargo operations under section 418.

(4) Subsections 407(b) and 407(c).

(5) Sections 409 and 412(c).

(b) Each direct air carrier is exempted from section 408(a) of the Act, except that the exemption in this paragraph—

(1) Does not include section 408(a)(4),

(2) Does not apply to transactions affecting passenger air transportation, and

(3) Is subject to the notification requirement of § 291.33.

3. Section 291.32 is amended to read:

§ 291.32 Exemptions from the Act for persons other than direct air carriers.

Air freight forwarders, common carriers that are not air carriers, and persons substantially engaged in the business of aeronautics other than as air carriers, are exempted from section 408(a) of the Act, except section 408(a)(4), for all transactions that do not affect passenger air transportation.

4. Section 291.33 is amended to read:

§ 291.33 Notification requirement for certain transactions involving section 401 certificated carriers.

(a) The exemption in § 291.31(b) is subject to the following condition:

Notice of any acquisition or other control transaction between a section 401 certificated carrier authorized to transport cargo in foreign air transportation and a carrier certificated under either section 401 or 418 of the Act shall be filed with the Board not later than 45 days before the effective date of the transaction. The Board may invoke any of the powers and procedures described in section 408(b)(3) of the Act within 45 days after notice is filed.

(b) For the purposes of this section, the "presumption of control" provisions of section 408(f) of the Act are not applicable.

(Secs. 204, 408, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1726, 1731; 49 U.S.C. 1324, 1378, 1386.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4807 Filed 2-13-79; 8:45 am]

[3710-92-M]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1110-2-1802]

PART 222—ENGINEERING AND DESIGN

Reporting Earthquake Effects

AGENCY: Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document provides guidance and establishes procedures for assuring the structural integrity and operational adequacy of major Civil Works structure following a significant earthquake. A recent review of Corps practices in dam design revealed a need for updating guidance in gathering data after an earthquake occurs. Post-earthquake evaluations will detect conditions of significant structural distress and provide a basis for timely initiation of restorative and remedial measures.

EFFECTIVE DATE: February 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Ernest L. Dodson, Chief, Geotechnical Branch, Office, Chief of Engineers, Department of the Army, Washington, D.C. 20314, (202) 693-6823.

Accordingly, 33 CFR Part 222 is amended by adding a new § 222.6 as follows.

§ 222.6 Reporting earthquake effects.

(a) *Purpose.* This regulation states policy, defines objectives, assigns functions, and establishes procedures for assuring the structural integrity and operational adequacy of major Civil Works structures following the occurrence of significant earthquakes. It primarily concerns damage surveys following the occurrences of earthquakes greater than Richter Magnitude 4.0.

(b) *Applicability.* This regulation is applicable to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) ER 1110-2-100;
(2) ER 1110-2-1806;
(3) ER 1110-2-8150; and
(4) State-of-the-Art for Assessing Earthquake Hazards in the United States—WES Miscellaneous Papers S-73-1—Reports 1 thru 10. Available from U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180.

(d) *Policy.* Civil Works structures which could be caused to fail or partially fail by an earthquake and whose failure or partial failure would endanger the lives of the public and/or cause substantial property damage will be evaluated following earthquake occurrences to insure their continued structural stability, safety and operational adequacy. These structures include dams, navigation locks, powerhouses, and appurtenant structures, (intakes, outlet works, buildings, tunnels, paved spillways) which are operated by the Corps of Engineers and for which the Corps is fully responsible. Also included are major levees, floodwalls, and similar facilities designed and constructed by the Corps of Engineers and for whose structural safety and stability the Corps has a public obligation to be aware of although not responsible for their maintenance and operation. The evaluation of these structures will be based upon post-earthquake inspections which will be

conducted to detect conditions of significant structural distress and to provide a basis for timely initiation of restorative and remedial measures.

(e) *Post-earthquake inspections and evaluation surveys.* (1) *Limitations of present knowledge.* The design of structures for earthquake loading is limited by the infrequent opportunity to compare actual performance with the design. Thus it cannot be assumed that a structure will not be damaged from earthquake loadings below that for which it was designed. Furthermore, earthquakes have occurred in several parts of the country where significant seismic activity had not been predicted by some seismic zoning maps. This indicates the possibility that earthquake induced loads may not have been adequately considered in the design of older structures.

(2) *Need for timely appraisals.* Prompt post-earthquake field inspections and reports will help insure that appropriate remedial measures can be taken in a timely manner for structures that may have been damaged by earthquake or other type of induced ground motion (i.e., underground nuclear blasts). In addition, the accumulated information can be used to improve the earthquake design criteria for future Corps projects.

(3) The following general limits outlining prescribed areas for post-earthquake inspection should be followed:

(i) *Richter Magnitude between 4.0 and 5.0*—No inspection required unless epicenter location is less than 30 miles from the project and/or specific reports of possible damage are received from the field.

(ii) *Richter Magnitude 5 through 7*—Inspection required within 100 miles of epicenter or greater distance where specific knowledge of damage is available.

(iii) *Richter Magnitude 7 and above*—Inspection required within 200 miles of epicenter or greater distance where specific knowledge of damage is available.

(4) *Types of reportable damage.* Many types of structural damage can be induced by ground motion from earthquakes or from large nuclear blasts (which also tend to induce ground vibrations in the more damaging lower frequency ranges). Any post-earthquake change in appearance or functional capability of a major Civil Works structure should be evaluated and reported. Examples are symptoms of induced stresses in buildings made evident by cracked plaster, windows or tile, or in binding of doors or windows; cracked or shifted bridge pier footings or other concrete structures; turbidity or changed static level of water wells; cracks in concrete dams or earth embankments; and misalignment of hydraulic control structures or gates. Induced dynamic loading on earth dams may result in loss of freeboard by settlement, or cause localized quick conditions within the embankment sections or earth foundations. Also, new seepage paths may be opened up within the foundation or through the embankment section. Ground motion induced landslides may occur in susceptible areas of the reservoir rim, causing embankment overtopping by waves and serious damage. All such unusual conditions should be evaluated and reported.

(f) *Inspection and evaluation programs.* (1) A program for inspection of structures should be established immediately following a significant earthquake as defined in paragraph (f)(3). It is expected that the intitial boundaries of the area to be inspected will be established only within rather broad limits. HQDA (DAEN-CWE) WASH DC 20314 will be notified of the inspection program as soon as it is established.

(2) As a general rule, the structures which would be of concern following an earthquake are also the structures which are involved in the inspection program under ER 1110-2-100. Whenever feasible, instrumentation and prototype testing programs undertaken under ER 1110-2-100 to monitor structural performance and under ER 1110-2-8150 to develop design criteria will be utilized in the post-earthquake safety evaluation programs. Additional special types of instrumentation will be incorporated in selected structures in which it may be desirable to measure forces, pressures, loads, stresses, strains, displacements, deflections, or other conditions relating to damage and structural safety and stability in case of an earthquake.

(3) A detailed, systematic technical inspection will be made of the post-earthquake condition of each selected structure, taking into account its distinctive features. For structures which have incurred earthquake damage a formal technical report will be prepared in a format similar to inspection reports required under ER 1110-2-100. The report will include summaries of the instrumentation and other observation data for each inspection, for permanent record and reference purposes. This report will be used to form a basis for major remedial work when required. Where accelerometers or other types of strong motion instruments have been installed, readings and interpretations from these instruments should also be included in the report. The report will contain recommendations for remedial work when appropriate, and will be transmitted through the Division Engineer for review and to DAEN-CWE for review and approval. For structures incurring no damage a simple statement to this effect will be all that is required in the report, unless seismic instrumentation at the project is activated. (See paragraph (g)(4)).

(g) *Responsibilities.* (1) The Engineering Divisions of the District offices will formulate the inspection program, conduct the post-earthquake inspections, process and analyze the data of instrumental and other observations, evaluate the resulting condition of the structures, and prepare the inspection reports. The Engineering Division is also responsible for planning special instrumentation felt necessary in selected structures under this program.

(2) The Construction Divisions of the District offices will be responsible for the installation of the earthquake instrumentation devices and for data collection if an earthquake occurs during the construction period.

(3) The Operations Divisions of the District offices will be responsible for earthquake data collection after the construction period in accordance with the instrumental observation programs, and will assist and participate in the post-earthquake inspections.

(4) The U.S. Geological Survey has the responsibility for servicing and collecting all data from strong motion instrumentation at Corps of Engineers dam projects following an earthquake occurrence. However, the U.S. Army Waterways Experiment Station (WES) is assigned the responsibility for analyzing and interpreting these earthquake data. Whenever a recordable earthquake record is obtained from seismic instrumentation at a Corps project, the Division will send a report of all pertinent instrumentation data to the Waterways Experiment Station, ATTN: WESGH, P.O. Box 631, Vicksburg, Mississippi 39180. The report on each project should include a complete description of the locations and types of instruments and a copy of the instrumental records from each of the strong motion machines activated.

(5) The Engineering Divisions of the Division offices will select structures for special instrumentation for earthquake effects, and will review and monitor the data collection, processing, evaluating, and inspecting activities. They will also be specifically responsible for promptly informing HQDA (DAEN-CWE) WASH DC 20314, when evaluation of the condition of the structure or analyses of the instrumentation data indicate the stability of a structure is questionable. (Exempt Report, para 7-2o, AR 335-15).

(h) *Funding.* Funding for the evaluation and inspection program will be under the Appropriation 96X3123, Operations and Maintenance, General. Funds required for the inspections, including Travel and Per Diem costs in-

curred by personnel of the Division office or the Office, Chief of Engineers, will be from allocations made to the various projects for the fiscal year in which the inspection occurs.

(Pub. L. 738, 74th Congress, 49 Stat. 1570 (33 U.S.C. 701b); Pub. L. 685, 75th Congress, 52 Stat. 802 (33 U.S.C. 540); Pub. L. 92-367, 86 Stat. 506 (33 U.S.C. 467 et seq.))

Dated: February 6, 1979.

THORWALD R. PETERSON.
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 79-4747 Filed 2-13-79; 8:45 am]

[6730-01-M]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER A—GENERAL PROVISIONS

[General Order No. 16, Amdt. 28; Docket No. 78-47]

PART 502—RULES OF PRACTICE AND PROCEDURE

Intercoastal Shipping; Guidelines

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: Part 502 of the Federal Maritime Commission's Rules has been revised to enable the Commission to comply with the requirements of Pub. L. 95-475, an amendment to the Intercoastal Shipping Act, 1933. This new statute is intended in part to expedite the Commission's decision-making process in its regulation of the domestic offshore trades. Pub. L. 95-475 imposes a definitive procedural schedule upon Commission consideration of matters arising under the 1933 Act. The new rules effectuate the legislative intent by establishing detailed guidelines for participants in proceedings under the Act to permit prompt adjudication by the Commission.

EFFECTIVE DATE: February 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, NW, Washington, D.C. 20573. (202) 523-5725.

SUPPLEMENTAL INFORMATION: This proceeding was initiated by a Notice of Proposed Rulemaking published in the FEDERAL REGISTER on November 24, 1978 (43 F.R. 54960-62). The Federal Maritime Commission proposed to revise its rules of practice and procedure in order to enable it to comply with the requirements of Pub. L. 95-475, 92 Stat. 1494 (1978), which amends the Intercoastal Shipping Act, 1933 (46 U.S.C. 843 et seq.). In its Notice, the Commission indicated that in order to effectuate the legislative intent to expedite the Commission's decision-making process, strict procedural guidelines for participants in the proceedings under the Act were required. These Final Rules establish such guidelines.

Comments were received from six parties.[1] They addressed a variety of issues raised by the proposed Rules. All comments received were carefully reviewed and considered. The various objections raised and the revisions made in the Proposed Rules are discussed below.

1. *Section 502.67(a).* Crowley, Matson, and Sea-Land expressed concern as to the confidentiality of the underlying workpapers filed concurrently with a general rate increase or decrease. The Commission agrees that the confidentiality of particular financial data submitted by a carrier must be protected. Allowing a carrier's competitors to have unlimited access to this information could cause undue harm to the submitting carrier without significantly advancing any regulatory purpose. Therefore, the Commission has incorporated into the Final Rules a number of specific controls on the distribution of the material filed pursuant to the Rules. Unless authorized by an order of the Commission or a Presiding Administrative Law Judge, the contents of the underlying workpapers are not to be disclosed. However, in order to provide the public with the information necessary to evaluate general rate increases or decreases, copies of this information must be readily accessible prior to the institution of formal investigations. Therefore, carriers will be required to promptly furnish their underlying workpapers to those persons who have requested their release and submitted a certificate indicating that the data is sought in connection with protests related to and proceedings resulting from the carrier's general rate increase or decrease. This method of distribution will limit release of the data to those persons having an interest in the rate action and will enable the carrier to be informed as to those people who have had access to its workpapers.

A copy of the testimony and exhibits filed at the Federal Maritime Commission by the carrier must also be made available at every port in the relevant trade at the offices of the carrier or its agent. The Commission agrees with Matson that the inclusion of the phrase "or its agent" clarifies the nature of the requirement. However, the Commission cannot endorse Sea-Land's suggestion that the availability of the direct testimony and exhibits should be restricted to the offices of the Commission. The public's need for information must be weighed against any burden imposed upon the carrier. Making the testimony and exhibits available only at Commission offices would unduly weight the scale against those seeking access to that material.

The Commission believes there is merit in Sea-Land's suggestion that copies of testimony, exhibits, and underlying workpapers should be served only on the attorney general of each *noncontiguous* State, Commonwealth, Possession, or Territory having ports in the relevant trade served by the carrier. Service on officials of contiguous States would be unwarranted and unnecessarily burdensome to the submitting carrier. Under the Final Rules, carriers will be required to certify that all of the designated material has been served simultaneously on the appropriate attorney general. The concern here is that in the absence of such a requirement, timely service will not be made upon officials in the more outlying regions.

Another comment which the Commission has incorporated into the Final Rules is Matson's proposal that the word "workpapers" be substituted for the words "underlying data". "Underlying data" is too broad and too vague, and the use of this term might impose upon a carrier the burden of providing a quantity of material unnecessary to an analysis of a rate action.

Both Crowley and T.O.T.E. urged that the requirement that a carrier submit its entire direct case concurrently with the filing of a general rate increase or decrease, irrespective of whether the filing is subsequently protested, imposes an undue and unnecessary burden on the carrier. The Commission cannot agree with this assessment of the Rule. In order to evaluate the justness and reasonableness of the rate and to expedite Commission decision-making, it is imperative that carriers make the designated material available at the time of their initial filing. The Commission firmly believes that this requirement is necessary to meet the procedural schedule imposed by Congress.

Further, in response to an inquiry by Sea-Land, the filing of certain past and projected financial data as presently required by General Order 11 would not constitute a *prima facie* direct case under § 502.67. As is true in

[1] Comments were submitted by: Crowley Maritime Corporation (Crowley); Matson Navigation Company (Matson); The Military Sealift Command (M.S.C.); Puerto Rico Maritime Shipping Authority (P.R.M.S.A.); Sea-Land Service, Inc. (Sea-Land); and Totem Ocean Trailer Express, Inc. (T.O.T.E.).

current rate actions, a far more comprehensive submission would be required.

M.S.C. urged that the testimony and exhibits filed by the carrier should be executed under oath. The Commission agrees that this suggestion has merit. M.S.C. also proposed that carriers be required to serve their entire direct case on major ratepayers who have requested such service prior to the filing of the rate increase or decrease. The Commission believes that such a requirement would impose a substantial and unnecessary burden upon carriers. The material is readily available to the ratepayer at the offices of the carrier or its agent at every port in the trade served by the carrier. Requiring ratepayers to inspect this material at these locations clearly will not substantially disadvantage their participation in any proceedings under the Act.

The substance of Sea-Land's proposal that a provision be included in the Rules which would set forth the Commission's authority to reject tariffs and establish an early deadline for the exercise of that authority has been incorporated in the Final Rules.

2. *Section 502.67(b).* Sea-Land recommended the inclusion of a provision mandating that protests which address only the effect of general rate increases on specific commodities should not be entertained. The Commission concurs. If individual commodity considerations were to be superimposed on general rate cases, it is doubtful that proceedings could be completed expeditiously.

3. *Section 502.67(c).* The Commission has not adopted Sea-Land's proposal that the provision mandating that replies to protests shall be filed no later than fifteen days prior to the effective date of the proposed changes. Section 502.74 (Rule 74) provides adequate guidelines for the timely filing of replies to protests, while allowing a degree of flexibility absent in the Sea-Land proposal.

4. *Section 502.67(d).* Both Matson and M.S.C. have urged the Commission to include a provision in the Final Rules concerning the filing requirements for other than general revenue changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933. M.S.C. argued that the requirement for concurrent filing by the carrier of its entire direct case should be expanded to encompass all tariff changes. Matson has contended that the direct cases of all parties, including the carrier, should be filed twenty days after a proceeding is instituted which involves less than a general rate increase. We believe there is a distinction which must be recognized in evaluating these comments. A general rate increase or decrease is far more likely to evoke a protest than are other kinds of tariff changes. The greater likelihood that a general rate action will be protested justifies the imposition of a stringent filing requirement on the carrier submitting such a change. Therefore, the Commission endorses Matson's proposal that the carrier, Hearing Counsel, and all protestants be required to simultaneously serve testimony, exhibits, and workpapers on all parties and lodge copies of testimony and exhibits with the Administrative Law Judge no later than twenty days after the effective date of other than general revenue tariff changes should the proposed change be made subject to a docketed proceeding. The modified filing requirement approved by the Commission ensures that proceedings involving other tariff changes will proceed expeditiously, but avoids imposing an additional burden on the carrier. If the Commission were to adopt M.S.C.'s recommendation, carriers would be compelled to compile substantial amounts of evidence which, based upon past experience, they may not be called upon to use in a formal proceeding.

Matson's suggestion that the phrase "general increase in rates or general decrease in rates" should be substituted for the word "matter" has also been incorporated with stylistic modification into the Final Rules. The phrase offered by Matson serves to clarify the intent of the section that Hearing Counsel's and protestants' responsibility to serve testimony, exhibits, and underlying data in response to carrier filings arises only in general rate cases.

Sea-Land also urged the adoption of a requirement that would limit the time during which the Commission would be authorized to issue orders of investigation not involving suspensions to the seven-day period prior to the effective date of the proposed changes. The suggestion has merit and will be considered as an amendment to the Commission's internal procedures. As such, its inclusion in the Commission's rules of practice and procedure would be inappropriate.

The Commission has not incorporated a proposal by M.S.C. that would have guaranteed Hearing Counsel and all protestants fourteen days to prepare their direct cases. The Commission acknowledges M.S.C.'s concern that the guidelines incorporated in the Final Rules might impose severe time constraints on Hearing Counsel and protestants, but believes that the adoption of the internal Commission procedure discussed above obviates the problem.

5. *Section 502.67(e).* The Commission has incorporated into the Final Rules the concept of Matson's suggestion that the Administrative Law Judge be allowed to dispense with a prehearing conference if, in his discretion, he determines that a conference would not expedite the proceedings at hand. The inclusion of Matson's proposal injects an additional degree of flexibility into the Rules.

Matson also recommended that the phrase "Such other matters as may aid in the disposition of the proceeding" be added to the list of subjects to be considered at the prehearing conference. Again, to allow for increased flexibility under the Final Rules, the Commission has adopted this suggestion.

6. *Section 502.67(f).* P.R.M.S.A. expressed concern that the carrier may be required to prepare a prehearing statement prior to receipt of the direct case of Hearing Counsel and protestants. While acknowledging that this possibility exists, the Commission is reluctant to interfere with the Administrative Law Judge's discretionary authority to set the date of the prehearing conference. The Commission believes that the detailed protests mandated by the Rules would provide carriers with the information necessary to prepare a prehearing statement in the event that the direct case of Hearing Counsel or protestants had not been received.

7. *Section 502.67(g).* P.R.M.S.A. also expressed concern that the Rules do not indicate whether oral argument will be held prior to a Commission decision in an action under the Rules. The Commission believes that § 502.241 adequately addresses this issue and renders additional guidelines in the Final Rules unnecessary.

P.R.M.S.A. urged that the procedural regulations mandated by Pub. L. 95-475 should not be adopted prior to the issuance of the substantive guidelines required by the amendment to section 3 of the Intercoastal Shipping Act. The Commission agrees with P.R.M.S.A. that it would be advisable to await the adoption of the substantive guidelines. Unfortunately, it is imperative that the procedural rules be issued immediately in order to coincide as closely as possible with the effective date of the Act. We anticipate that the procedural rules will evolve, based on our experience in processing general rate changes under these procedures.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 21, 27, and 43 of the Shipping Act, 1916 (46 U.S.C. 820, 826, 841(a)), and section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), Part 502 of Title 46, Code of Federal Regulations, is amended as set forth hereinafter.

Section 502.67 is revised as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

(a)(1)(i) The term "general rate increase" means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenues of such carrier for the particular trade of not less than 3 per centum.

(ii) The term "general rate decrease" means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in the intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(2) No general rate increase or decrease shall take effect before the close of the sixtieth day after the day it is posted and filed with the Commission. The carrier shall file, under oath, concurrently with any general rate increase or decrease testimony and exhibits of such composition, scope and format that they will serve as the carrier's entire direct case in the event the matter is set for formal investigation, together with all underlying workpapers used in the preparation of the testimony and exhibits. The carrier shall also certify that copies of testimony, exhibits and underlying workpapers have been served simultaneously on the attorney general of every non-contiguous State, Commonwealth, Possession or Territory having ports in the relevant trade that are served by the carrier. The contents of underlying workpapers served on attorneys general pursuant to this paragraph are to be considered confidential and are not to be disclosed to members of the public except to the extent specifically authorized by an order of the Commission or a Presiding Administrative Law Judge. A copy of the testimony and exhibits shall be made available at every port in the trade at the offices of the carrier or its agent during usual business hours for inspection and copying by any person. In addition, the underlying workpapers shall be made available promptly by the carrier to all persons requesting them for inspection and copying upon the submission of the following certification, under oath, to the carrier:

CERTIFICATION

I (Name and Title if Applicable) ——— of (Full Name of Company or Entity ———, having been duly sworn certify that the underlying workpapers requested from (Name of Carrier) ———, will be used solely in connection with protests related to and proceedings resulting from (Name of Carrier) ——— general rate increase or decrease scheduled to become effective (Date) ——— and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the carrier, unless public disclosure is specifically authorized by an order of the Commission or a Presiding Administrative Law Judge.

Signature ———

Date ———

Signed and Sworn before me this ——— Day of ———.

Notary Public ———

My Commission expires ———.

(3) Failure by the carrier to meet the service and filing requirements of paragraph (a)(2) of this section may result in rejection of the tariff matter. Such rejection will take place within three work days after the defect is discovered.

(b)(1) Protests against a proposed general rate increase or decrease made pursuant to section 3 of the Intercoastal Shipping Act, 1933, may be made by letter and shall be filed with the Director, Bureau of Ocean Commerce Regulation and the carrier no later than thirty (30) days prior to the proposed effective date of the proposed changes. In the event the due date for protests falls on a Saturday, Sunday or national legal holiday, protests must be filed with the Director, Bureau of Ocean Commerce Regulation and the carrier no later than the last business day preceding the weekend or holiday. Persons filing protests pursuant to this section shall be made parties to any docketed proceeding involving the matter protested, provided that the issues raised in the protest are pertinent to the issues set forth in the order of investigation. Protests shall include:

(i) Identification of the tariff in question;

(ii) Grounds for opposition to the change;

(iii) Identification of any specific areas of the carrier's testimony, exhibits, or underlying data that are in dispute and a statement of position on each area in dispute;

(iv) Specific reasons why a hearing is necessary to resolve the issues in dispute;

(v) Any requests for additional carrier data;

(vi) Identification of any witnesses that protestant would produce at a hearing, a summary of their testimony and identification of documents that protestant would offer in evidence; and

(vii) A subscription and verification.

(2) Protests against other proposed changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933, shall be filed no later than twenty (20) days prior to the proposed effective date of the change. The provisions of paragraph (b)(1) of this section relating to the form, place and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against other proposed tariff changes.

(c) Replies to protests shall conform to the requirements of § 502.74 (Rule 74).

(d)(1) In the event a general rate increase or decrease is made subject to a docketed proceeding, Hearing Counsel and all protestants shall serve, under oath, testimony and exhibits constituting their direct case, together with underlying workpapers on all parties and lodge copies of testimony and exhibits with the Administrative Law Judge no later than seven (7) days after the tariff matter takes effect or, in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(2) If other proposed tariff changes made pursuant to section 3 of the Intercoastal Shipping Act, 1933 are made subject to a docketed proceeding, the carrier, Hearing Counsel and all protestants will simultaneously serve testimony and exhibits constituting their direct case, together with underlying workpapers on all parties and lodge copies of testimony and exhibits with the Administrative Law Judge no later than twenty (20) days after the tariff matter takes effect, or in the case of suspended matter, twenty (20) days after the matter would have otherwise gone into effect.

(e)(1) Subsequent to the exchange of testimony, exhibits, underlying data and prehearing statements by all parties, the Administrative Law Judge shall, at his discretion, direct all parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(iii) Identification of any issues which require evidentiary hearing;

(iv) Limitation of witnesses and areas of cross-examination should an evidentiary hearing be necessary;

(v) Requests for subpoenas; and

(vi) Other matters which may aid in the disposition of the hearing.

(2) After considering the procedural recommendations of the parties, the Administrative Law Judge shall limit the issues to the extent possible and establish a procedure for their resolution.

(3) The Administrative Law Judge shall, whenever feasible, rule orally upon the record on matters presented before him.

(f)(1) It shall be the duty of every party to file a prehearing statement on a date specified by the Administra-

tive Law Judge, but in any event no later than the date of the prehearing conference.

(2) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth:

(i) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(ii) Identification of any issues which require evidentiary hearing, together with the reasons why these issues cannot be resolved readily on the basis of documents, admissions of fact, stipulations or an alternative procedure;

(iii) Requests for cross-examination of the direct written testimony of specified witnesses, the subjects of such cross-examination and the reason why alternatives to cross-examination are not feasible;

(iv) Requests for additional, specified witnesses and documents, together with the reasons why the record would be deficient in the absence of this evidence; and

(v) Procedural suggestions that would aid in the timely disposition of the proceeding.

(g) The provisions of this section are designed to enable the Administrative Law Judge to complete a hearing within sixty (60) days after the proposed effective date of the tariff changes and submit an initial decision to the Commission within one hundred twenty (120) days pursuant to section 3(b) of the Intercoastal Shipping Act, 1933. The Administrative Law Judge may employ any other provision of the Commission's rules of practice and procedure, not inconsistent with this section, in order to meet this objective. Exceptions to the decision of the Administrative Law Judge, filed pursuant to § 502.227 (Rule 227) shall be served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be served no later than ten (10) days after date of service of exceptions.

(h) Intervention by persons other than protestants ordinarily shall not be granted. In the event intervention of such persons is granted, the Administrative Law Judge or the Commission may attach such conditions or limitations as are deemed necessary to effectuate the purpose of this section.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-4977 Filed 2-13-79; 8:45 am]

proposed rules

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 201]

[Docket No. (R-79-620)]

MOBILE HOME LOANS

Down Payments

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: With this proposed amendment, Department requirements regarding mobile home loans would be liberalized with respect to down payment provisions. The change is needed to enable borrowers purchasing a new home to offer their present home in down payment. Currently, only cash payment is permitted.

DATES: Communications must be received on or before April 14, 1979.

ADDRESS: Comments should be addressed to Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. A copy of each comment will be available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

William B. Stansberry, Title I Loan Insurance Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410 (202) 755-8686.

SUPPLEMENTARY INFORMATION: The present regulation requires that down payments made in connection with the purchase of mobile homes finances pursuant to this part be made in cash. This amendment will permit borrowers who presently own a mobile home to "trade-in" their mobile home rather than sell it.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available during regular business hours at the above address.

Accordingly, it is proposed to amend § 201.535(a) to read as follows:

§ 201.535 Borrower's minimum investment.

(a) * * * A used mobile home owned by the borrower may be accepted as a "trade-in" lieu of the total cash down payment required: *Provided*, That the borrower's equity in the home exclusive of liens on the home is equal to or greater than the minimum down payment required under this section. No part of the required down payment may be borrowed. The mobile home being "traded-in" shall be clearly identified and the method used to determine the value of the home shall be clearly documented.

* * * * *

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, (12 U.S.C. 1703.)

Issued at Washington, D.C., February 7, 1979.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-4818 Filed 2-13-79; 8:45 am]

[4210-01-M]

[24 CFR Part 201]

[Docket No. R-79-621]

MOBILE HOME IMPROVEMENT LOANS

Proposed Rule

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides for the insurance of financial institutions which make or purchase loans for the improvement of mobile homes. The purpose of the change is to encourage loans insured under the National Housing Act for insulation and other conservation improvements.

DATE: Interested persons are invited to submit written comments, data, suggestions or objections by April 16, 1979.

ADDRESS: All materials which persons wish to submit should be sent to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. A copy of each comment will be available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

William B. Stansberry, Acting Director, Title I Insured Loan Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-8686.

SUPPLEMENTARY INFORMATION: This amendment will enable mobile home owners, many of whom cannot pay cash, to borrow and improve their mobile homes, by means of alteration and repair. It is expected that many of these loans will be made for insulation and other energy conservation improvements.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. a copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, the proposed amendments are as follows:

1. In § 201.12 paragraph (b) is proposed to be amended as follows:

§ 201.12 Insurance reserve.

* * * * *

(b) There shall be maintained for each insured a general insurance reserve which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in Subparts A, B, C, D, E, and F of this part on or after March 1, 1950, and prior to the expiration of the Commissioner's authority to insure under the provisions of this Act, less the amount of all claims approved for payment in connection with such loans and less the amount of any adjustment made pursuant to paragraph (c) of this section.

* * * * *

2. In Part 201 a new Subpart F is proposed to be added as follows:

Subpart F—Improvements to Mobile Homes

Sec.
201.1700 Purpose.
201.1701 Applicability of Subpart A.
201.1702 Definitions.

Sec.
201.1703 Maximum loan amount and terms.
201.1704 Use of loan proceeds.

AUTHORITY: Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, (12 U.S.C. 1703) as amended.

Subpart F—Improvements to Mobile Homes

§ 201.1700 Purpose.

This subpart permits approved Title I lenders to make or purchase loans to finance improvements to mobile homes.

§ 201.1701. Applicability of Subpart A.

All of the provisions of Subpart A of this part concerning insurance of institutions making or purchasing property improvement loans shall be applicable to the insurance of institutions making or purchasing mobile home improvement loans pursuant to this subpart except the following provisions:

Sec.
201.1(i), (j), (k), (l), (m), (n), (o), (p), Definitions.
201.2(d)(2) Eligible notes.
201.3(a), (b) and (c) Maximum amounts of loans.
201.5(h) Credits and collections.
201.6(b), (d) and (e) Eligible loans.

§ 201.1702 Definitions.

As used in the regulations in this subpart the term—

(a) "Borrower" means an individual who is a mobile home owner and who applies for and receives a loan for the improvement of a mobile home that is his principal residence which the borrower has occupied at least 90 days before applying for the Title I improvement loan.

(b) "Principal residence" means that place where the borrower expects to live at least nine (9) months of the year.

(c) "Mobile home owner" means a borrower who has title to at least one-half (½) interest in the mobile home.

(d) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

§ 201.1703 Maximum loan amount and terms.

The maximum loan amount shall not exceed $5,000. The maximum maturity of a loan shall not exceed twelve (12) years and thirty-two (32) days.

§ 201.1704 Use of loan proceeds.

The proceeds of a loan shall be used by a mobile home owner to finance alterations, repairs and improvements of a mobile home owned by the borrower which mobile home is the principal residence of the borrower. The proceeds shall be used solely for the purposes indicated. Alterations, repairs and improvements shall substantially protect or improve the basic livability or utility of the mobile home and must be commenced in reliance upon the credit facilities afforded by Title I of the Act. Moveables, furniture, freestanding appliances, and other items not part of the structure of the mobile home, shall not be eligible for financing.

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, (12 U.S.C. 1703) as amended.)

Issued at Washington, D.C., February 7, 1979.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-4808 Filed 2-13-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 258]

INDIAN FISHING—HOOPA VALLEY INDIAN RESERVATION

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule on which comment is solicited.

SUMMARY: The Department of the Interior is proposing new regulations to govern Indian fishing on the Hoopa Valley Indian Reservation for the 1979 salmon, steelhead and sturgeon fisheries. Normally tribal governments would be responsible for regulation of Indian fishing on a reservation. Tribal regulations on the Hoopa Valley Indian Reservation has not been possible because the Reservation is shared by two tribes, one of which does not currently have a functioning government. However, numerous meetings have been held by and with Indians of the Reservation in an effort to develop regulations which overcome the problems experienced with the Department's interim rules governing Indian fishing, which became effective on July 15, 1978. During these meeting Hoopa and Yurok Indians initiated a process to draft their own proposed version of fishing regulations, and further developments in this process will be carefuly taken into account before this proposed rule is made final. In the absence of a Yurok tribal government and a mechanism for achieving effective, Reservation-wide self-regulation, the Secretary of the Interior will continue to exercise the Department's responsibilities as trustee to preserve and protect Indian resources, by regulating the Indian fishery to allow for the exercise of Indian fishing rights consistent with conservation of the resource.

DATES: This is a proposed rule on which comment is solicited. Comments on this proposed rule must be received on or before March 16, 1979. Comments received will be carefully reviewed, and changes will be made where appropriate, prior to publication of the final rule.

ADDRESS: Send written comments to: Assistant Secretary—Indian Affairs, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
Joe Weller, Superintendent, Bureau of Indian Affairs, Hoopa Agency P.O. Box 367, Hoopa, California 95546. (916/625-4285).

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. § 1457, 25 U.S.C. § 2 and § 9, 25 U.S.C. § 262 and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of federally reserved Indian fishing rights.

These proposed regulations reflect the Department's continuing concern for the protection of the federally reserved fishing rights of Indians of the Hoopa Valley Indian Reservation and for the conservation of the fishery resources for which the fishing rights of these Tribes were reserved. It is necessary to publish these proposed regulations now in order to provide time for public comment and proper review and consideration of comments received. Final rules will be published in time to govern spring fishing on the Reservation. Further progress by Indians of the Reservation in the development of their proposed fishing regulations will be carefully considered in the review process. If the measures proposed by the Indians during the comment period have consensus among Hoopas and Yuroks and if they are biologically sound, enforceable, and legally sufficient to protect the rights of all Indians of the Reservation, they will be given great weight in the Department's review and consideration of comments for changes prior to publication of the final rules.

The pertinent historical data for informational purposes relative to the Hoopa Valley Indian Reservation Indian fishery, was published in the Federal Register, July 13, 1978, Vol. 43 No. 135, Pages 30047 through 30049. It is incorporated herein by reference, and supplemented herewith.

On November 20, 1978, the Assistant Secretary—Indian Affairs, recognized that the Hoopa Tribe was an organized tribe, whereas the Yurok Tribe was not. The letter went on to state that criteria would be developed in order that the Yurok Tribe could organize, and until such time as a Reservation-wide management and coordination body could be established, it would be "necessary for the Department fo the Interior through my office to assume complete management of the Reservation assets on behalf of both Tribes." There can be no doubt that the fishery resource is a "Reservation asset."

The Hoopa Agency Superintendent has been conducting a series of meetings with the Indians along the Klamath and Trinity Rivers in an effort to develop consensus among the Indians as to specific measures to be included in the fishing regulations for the Reservation. During these meetings Hoopa and Yurok Indians initiated a process to draft their own proposed version of fishing regulations. Although the Hoopa Tribal Council has not participated in this process, Indian participants have indicated an intention to reach a consensus with the Hoopa Tribe. Any such consensus, and progress in that direction, is highly encouraged by the Department. All progress in this respect will be carefully considered in the review of comments and consideration of changes of this proposed rule. With this in mind and in the absence of a mechanism for the Hoopa and Yurok Tribes to establish a uniform system for Reservation-wide self-regulation, the Department will provide the regulatory vehicle and will exercise its trust responsibility in the preservation and protection of the fishery resources of the Reservation.

Based on the biological data available it is expected that the 1979 Chinook salmon runs will be smaller than usual because of the drought conditions which existed during the 1976 production year. As a result of the smaller than usual runs, it is believed that the fisheries will not be large enough to sustain commercial fishing in addition to providing for consumptive fishing and spawning escapement. Based on written correspondence and the meetings which have been held, there is every reason to believe that the majority of the Indians of the Reservation place priority on consumptive over commercial fishing and would favor a moratorium on commercial fishing if such is required to meet the consumptive fishing and escapement needs. Therefore, it is proposed that commercial fishing not be permitted under these regulations. It is recognized, however, that the rights to fish commercially do exist and may be exercised at such future time when the runs can withstand the increased harvest, and that such rights will not be modified or extinguished by these regulations.

No age limit has been proposed for eligible fishers to fish on the Reservation. Traditionally and historically Indian children have assisted their parents and grandparents in the fishery on the Reservation. Consideration was given to establishment of an age limitation for permissible fishing under these regulations, with the rationale based upon safety considerations. However, since children have traditionally and historically assisted their parents and grandparents in the fishery, it is the opinion of the Department that the safety considerations are in the nature of parental guidance and should not be a subject of regulation by the Department. Identification cards will be issued by the Hoopa Agency, Bureau of Indian Affairs, to eligible Indians who do not now have cards. Arrangements for obtaining such cards may be made by contacting Joe Weller, Superintendent, Bureau of Indian Affairs, Hoopa Agency, P.O. Box 367, Hoopa, California, 95546, (916/625-4285).

The purpose of the provision requiring tail-clipping for transportation of fish outside the Reservation is to help curb the illegal sale of fish. If eligible fishers desire to transport fish off the Reservation to consume them, they may legally do so simply by removing the top half of the tail fin. There is reason to believe that some of the "subsistence" fish taken by eligible fishers are unlawfully sold. If fish brokers, wholesalers, dealers, etc., are advised that fin-clipped fish cannot be sold, the probability of their buying them is likely to be much reduced. At the same time, if fishers intend to sell fish taken under these regulations (claiming they came from Oregon, the ocean, or any other place), the fin-clipping provision would be a valuable enforcement tool.

There is a significant change in the method of gill net fishing for the spring run over the methods employed in previous seasons. It is proposed that only set-nets will be allowed. Experience has shown that the principle method of fishing on the Reservation is by the use of set-nets. The best biological data available indicate that the method of fishing that would permit a more equitable distribution of the harvestable fish is that of the use of set-nets rather than drift-nets. If drift-netting were permitted, the allowable harvest of fish would be divided disproportionately amont the fishers. About 15 drift-net fishers would end up with perhaps 50% of the fish. The remaining 50% of the allowable harvest would be distributed among the nearly 300 Indians who fish with set-nets. If all fishers utilized the drift-net method, the season (days permitted to fish) would be severely curtailed, possibly allowing only five or six days for fishing. There also have been reports of drift-nets infringing upon locations traditionally used for set-nets. This has increased conflict. It is the Department's desire to minimize conflict and to provide for an equitable distribution of harvestable fish to the Indians of the Reservation. The necessary conclusion is that the method of fishing must be limited to set-nets only.

The provision allowing for fishing seven (7) days per week is not considered to be detrimental to the fishery resource because of the low efficiency of the set-net fishery during the spring chinook salmon fishery. This occurs because of the length, mesh size, etc., restrictions set forth in the regulations. Although there may be 200 to 250 nets in the river at any given time, the high water conditions which usually prevail in the spring significantly lower the net's efficiency in catching fish, compared to fishing seasons at other times of the year.

The proposed rules provide for the use of in-season adjustments when data indicate a change is needed to meet management goals. Although the notice period for such adjustments is necessarily very short (24 hours) the basic regulations would have to be substantially more stringent if such adjustments were not possible. "Worst case" estimates on run size and harvest would have to be used in order to assure achievement of the escapement goal for conservation. The proposed rules provide for notice of the adjustment to be posted at numerous specific locations on the Reservation and published as a legal notice in local newspapers. These changes are all in response to specific recommendations from Indian fishers.

Consultation procedures have also been set forth in greater detail. The proposed rules provide generally for meetings every other week, rotating among Hoopa, Pecwan and Klamath, during which the status of the fishery, ocean harvests, the sport fishery, Indian harvests, and such specifics as the need for in-season adjustments will be discussed. It is anticipated that the use of such regular meetings will enable Indians to participate in the Department's decision-making process more effectively and at a much earlier stage than occurred last year.

Under these proposed rules provision is made for the use of criminal penalties and arrest to enforce the regulations to assure protection of the fishery resource and other Indian users' access to the resource. It is anticipated that law enforcement personnel will continue to issue citations rather than make arrests of most violators who are uncooperative. The provision of criminal penalties also eliminates the need to rely on Del Norte and Humboldt County officials to prosecute persons who assault law enforcement officers.

It should be emphasized that this regulation is interim only. It is expected that present organization-related activities of the Indians of the Reservation will enable the Tribes to assume regulation of the fishery under a Reservation-wide management plan in the very near future.

Upon review of that assessment it has been concluded that the proposed regulation of this on-reservation Indian fishery is not a major federal action which would significantly affect the environment within Section 102(2)(c) of the Act. Accordingly, the preparation of an environmental impact statement is not required. The assessment is available for review at the Sacramento Area Office of the Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California, 95825. (916/484-4682). The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document is William Finale, Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. (916/484-4682).

Dated: February 9, 1979.

JAMES A. JOSEPH,
Acting Secretary.

Chapter 1 of Title 25 CFR is proposed to be amended by revising Part 258 to read as follows:

PART 258—INDIAN FISHING—HOOPA VALLEY INDIAN RESERVATION

Sec.

AUTHORITY: 43 U.S.C. § 1457, 25 U.S.C. § 2 and § 9, 25 U.S.C. § 262, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

§ 258.1 Purpose.

(a) The regulations contained in this Part govern fishing by eligible Indians on the Hoopa Valley Indian Reservation. The purpose of these regulations is to protect the fishery resources and to establish procedures for the exercise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation. These regulations are intended to promote reasonably equal access to the fishery resources of the Reservation by all Indians of the Reservation, and to assure adequate spawning escapement.

(b) The limited extent to which regulation is undertaken by this Part is not intended nor should it be construed as a conclusion that the Secretary does not have the authority to take additonal measures to protect fishery resources on the Reservation if it is later determined that such measures are necessary.

§ 258.2 Term of Regulation.

These are proposed only, and not regulations effective as rules governing fishing. The regulations published by the Department of the Interior on Thursday, July 13, 1978 and amendments made thereto, will be superseded by these regulations, as revised following comments, when they are published as final rules.

§ 258.3 Application.

(a) The provisions of these regulations and all in-season adjustment orders issued under them apply to the waters of the Klamath and Trinity Rivers and their tributaries within the exterior boundaries of the Hoopa Valley Indian Reservation.

(b) Non-Indians are not regulated under this Part at this time and must therefore comply with all other applicable laws when fishing on the Hoopa Valley Indian Reservation.

§ 258.4 Definitions.

(a) *Channel means:* the wetted area from bank to bank.

(b) *Commercial fishing means:* the taking of fish with the intent to sell or trade them or profit economically from them.

(c) *Consumptive or subsistence fishing means:* the taking of fish to be eaten by Indians of the Reservation and their immediate families.

(d) *Depth of net means:* the total distance between cork and lead lines measured in meshes perpendicular to either cork or lead line.

(e) *Drift net (pole net) means:* a gill net which is not staked, anchored or weighted, but drifts free.

(f) *Eligible Fisher—Eligible Indian means:* any Indian who is determined to be an Indian of the Reservation under § 258.5 of this Part.

(g) *Enforcement officer means:*

(1) Any enforcement officer of the Department of the Interior;

(2) Any U.S. Marshal;

(3) Any tribal enforcement officer;

(4) Any person deputized to enforce these regulations.

(h) *Fish, fishing means:* the fishing for, catching, or taking or the attempted fishing for, catching, or taking of any salmon, steelhead or sturgeon within the exterior boundaries of the Reservation.

(i) *Fishers identification card means:* the identification card issued by the Bureau of Indian Affairs identifying the holder as a person eligible to fish as an Indian of the Reservation. The identification card shall include the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number of the holder, the holder's photograph, and the disclaimer provided in Section 258.5.

(j) *Fishing gear means:* any boat, motor, gillnet, seine, hook-and-line, and other apparatus used for taking fish.

(k) *Identification number means:* the identification number issued by the Bureau of Indian Affairs identifying the eligible fisher by number. This number is to be obtained by the eligible fisher and placed on his or her fishing gear where required by these regulations.

(l) *Gillnet means:* a net of single web construction bound at the top by a float line and at the bottom by a weight line.

(m) *Hand dip net means:* a section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be of any size.

(n) *Non-member means:* any person who is not an Indian of the Reservation as determined under Section 258.5.

(o) *Reservation means:* the Hoopa Valley Indian Reservation as extended, including those parts known as the "Extension" and the "Hoopa Square".

(p) *Secretary means:* Secretary of the Interior or his designated representative.

(q) *Set-net means:* a gill net which is staked or anchored or weighted at each end so that it does not drift free.

(r) *State enforcement officer means:* any official of the State of California who is authorized to enforce state fish and game laws.

(s) *Stretched measure means:* the distance between the inside of one knot and the outside of the opposite (vertical) knot on one mesh of a gill net. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(t) *Subsistence or consumptive fishing means:* the taking of fish to be eaten by Indians of the Reservation and their immediate families.

(u) *Test fishery means:* a fishery allowed on a limited basis under the supervision of a biologist for the purpose of acquiring technical or management information including run strength, timing, composition, gear selectivity, exploitation rate, and enhancement possibilities. A duly elected or appointed eligible Indian observer may accompany the biologist.

§ 258.5 Eligible Fisher—Eligible Indian.

(a) Enrolled members of the Hoopa Valley Tribe or plaintiffs in the case entitled *Jessie Short et al.* v. *United States,* Ct. Cls. No. 102-63 may exercise fishing rights under the authority of this Part. Also, persons who are allottees or direct descendants of allottees on the Hoopa Valley Indian Reservation, who currently and for eight (8) of the past ten (10) years have resided on the Reservation or within a 60 miles radius thereof are eligible to exercise Indian fishing rights within the Reservation boundaries. Such persons are eligible fishers for the purposes of these regulations only.

(b) *Disclaimer:* Determination of eligibility to fish under paragraph (a) of this section shall not be considered evidence of entitlement or lack of entitlement or in any way affect eligibility for enrollment or other tribal benefits or rights on the Hoopa Valley Indian Reservation.

(c) An eligible Indian as determined under paragraph (a) of this section who allows an ineligible person to assist in an Indian fishery on the Hoopa Valley Indian Reservation shall be subject to the penalties set out in Section 258.15(a).

§ 258.6 Fishers Identification Cards Required.

(a) Persons qualifying as an "Eligible Fisher" or "Eligible Indian" under § 258.5 shall obtain an Indian fishers identification card before exercising any Indian fishing rights on the Hoopa Valley Indian Reservation for the period covered by this regulation.

(b) *Penalties:* Eligible Indian fishers who do not have their identification card in their possession while fishing or transporting fish may be presumed to be ineligible to exercise fishing rights as an Indian of the Reservation and, therefore, subject to all other applicable laws. In the event such an Indian subsequently shows proof of eligibility, he or she shall be subject to the penalties prescribed in § 258.15 for failure to have an identification card in his or possession.

(c) *Fishers Identification Card:* A fishers identification card shall be issued by the Bureau of Indian Affairs Hoopa Agency to applicants who fulfill eligiblity requirements stated in § 258.5(a). The card shall show the name, basis for eligibility to fish, address, birthdate, color of hear, color of eyes, height, weight, identification number, and holder's photograph, and it shall not the disclaimer stated in § 258.5(b). Such cards may be obtained by contacting the Agency Superintendent, P. O. Box 367, Hoopa California, 95546 (916/625-4285).

The card shall be signed by the card holder. The card shall be countersigned by the authorized official of the Bureau of Indian Affairs certifying that the card holder is recognized as eligible to exercise Indian fishing rights on the Hoopa Valley Indian Reservation. A list of eligible fishers to whom identification cards have been issued will be furnished to the U.S. Fish and Wildlife Service and to fisheries management and enforcement agencies.

§ 258.7 Registration and identification of gear.

(a) At the time an eligible fisher applies for a fishers identification card he or she shall be issued an identification number and shall be required to place the identification number on all of his or her nets used for fishing in the exercise of Indian fishing rights on the Hoopa Valley Indian Reservation. Each net shall be marked on the first front, middle, and last end cord of each net used by each eligible fisher. Each net must have floats or corks attached which shall be floating and visible at all times.

(b) All fishing nets shall be conspicuously marked so that the fisher's identification number may be read without removing the gear from the water. In the absence of proof to the contrary, unmarked fishing nets shall be presumed not to be used in the exercise of the fishing rights of Indians of the Reservation and will be subject to seizure by a law enforcement officer.

§ 258.8 Fishing Locations, Gear Restrictions and Catch Marking.

(a) *Klamath River and Trinity River within exterior boundaries of the Hoopa Valley Indian Reservations.*

(1) Drift-net fishing shall not be permitted.

(2) No eligible fishers may use more than one set-net.

(3) Set-nets may not be tied together or otherwise used in combinations of two (2) or more nets.

(4) No set-net shall exceed one hundred (100) feet in length and both ends shall be anchored or staked at all times it is in use.

(5) No set-net may be placed in the Klamath River or Trinity River in such a way that it covers more than one-third (⅓) of the distance across the wetted area of any channel.

(6) No set-nets may be placed within twenty (20) feet of the mouth or across the mouth of any tributary stream of either the Klamath or Trinity Rivers. No set-nets may be placed in any tributary stream of either the Klamath River or the Trinity River.

(7) No set-nets may be placed within five hundred (500) feet in any direction of the confluence of the Klamath and Trinity Rivers.

(b) *Set-net Locations:* Set-net locations shall be determined by the individual Indian fishers in accordance with tradition and custom and in a manner consistent with the provisions of paragraph (a) of this Section 258.8. Disputes over set-net locations are to be resolved between the parties. If no satisfactory resolution is reached then all disputes are to be referred by the parties to elders or knowledgeable adults of the community for the particular area in which the unresolved dispute takes place.

(c) *Prohibited Gear:* The use of wire, fencing materials, traps, snag gear, explosives, stunning agents or caustic or lethal chemicals in any form is expressly prohibited in all fisheries.

(d) *Hook-and-Line Fishing:* Eligible Indians may engage in single hook-and-line fishing at all times on the Hoopa Valley Indian Reservation except when fishing is prohibited for all persons by emergency regulations promulgated hereafter for conservation purposes. Fishers identification cards shall be carried by all eligible Indians when engaged in hook-and-line fishing.

(e) *Dip-Net Fishing:* Eligible Indians may engage in dip-net fishing at all times on the Hoopa Valley Indian Reservation except when fishing is prohibited by emergency regulations promulgated hereafter for conservation purposes.

(f) *Authorized Gear:* Set-nets, dip-nets, and hook-and-lines are authorized for use on the Hoopa Valley Indian Reservation pursuant to the

limitations established in these regulations or the in-season or emergency regulations promulgated hereunder.

(g) *Special Fishing for Rest Home on Hoopa Square:* Two nets which are used in conformity with these regulations may be used for fishing for the Rest Home on the Hoopa Square. Such nets shall be clearly marked with a number assigned by the BIA Agency Office at Hoopa upon registration of the nets. An eligible Indian of the Reservation shall tend these nets.

(h) *Catch Marking:* All fish transported outside of the exterior boundaries of the Hoopa Valley Indian Reservation shall be clearly marked by clipping or cutting off the top half of the tail fin. The bottom half of the tail fin may not be removed until the fish have arrived at the location where they are to be consumed or preserved for consumption.

§ 258.9 Permissible Fishing, Open fishing days and times and mesh size.

(a) The Hoopa Valley Indian Reservation is open to the taking of salmon, steelhead and sturgeon by eligible Indians for subsistence and ceremonial purposes unless specifically closed by these regulations or by properly adopted in-season and emergency regulations promulgated hereafter. Fishing shall be permitted seven days per week and 20 hours per day except that all nets must be out of the water between the hours of 8:00 a.m. and noon each day.

(b) Fishing is permitted under these regulations for subsistence and ceremonial purposes only.

(c) Commercial fishing is prohibited by these regulations.

(d) Fish caught on the Hoopa Valley Indian Reservation may not be sold.

§ 258.10 Consultation.

The BIA Agency Superintendent shall generally hold meetings every other week during the fishing seasons, rotating among Klamath, Hoopa and Pecwan, to consult with Indians of the Reservation on the status of the fishery, ocean harvests, the sport fishery, Indian harvests, and such specifics as proposed in-season adjustments to the regulations, as appropriate. At the end of each presentation, comments will be received from those in attendance. A written summary of those comments shall be prepared by the Area Director or his designated representative.

§ 258.11 In-Season and Emergency Regulations.

(a) The Director of the U.S. Fish and Wildlife Service or his specifically authorized delegate is authorized to make in-season and emergency changes to the regulations when necessary to ensure proper management of the fisheries of the Klamath and Trinity Rivers. This authority includes the following powers:

(1) To close all or part of an Indian fishery when, in the Director's judgment, a closure is necessary to meet conservation needs.

(2) To re-open all or part of an Indian fishery when, in the Director's judgment, that action will not jeopardize spawning escapement.

(b) In-season or emergency regulations shall be effective until modified or rescinded by the Director.

(c) *Notification of in-season adjustments:*

(1) The Superintendent of the Hoopa Agency shall be responsible for having each emergency or in-season adjustment to the fishing regulations published in the *Eureka Times Standard* as a legal notice at least twenty-four (24) hours before it is to become effective, and in the *Del Norte Triplicate, Klamity Kourier,* and the *Arcata Union* as promptly as possible.

(2) The BIA Area Director shall have each in-season adjustment or emergency regulation published in the FEDERAL REGISTER as promptly as possible.

(3) The Superintendent of the Hoopa Agency shall attempt to post each emergency or in-season adjustment at least twenty-four (24) hours before it is to become effective at each of the following locations:

(i) Hoopa Post Office
(ii) Hoopa Shopping Center
(iii) Hoopa Agency, Bureau of Indian Affairs
(iv) Willow Creek Post Office
(v) Willow Creek Public Library
(vi) Weitchpec Bulletin Board, Pierson's Store
(vii) Weitchpec Elementary School
(viii) Pecwan Church
(ix) Pecwan Elementary School
(x) Requa Community Center
(xi) Resighini Rancheria Office
(xii) Klamath Post Office
(xiii) Requa Inn
(xiv) U.S. Coast Guard Station, Requa
(xv) Klamath Grocery Store
(xvi) Klamath Field Office, Bureau of Indian Affairs
(xvii) Bureau of Indian Affairs, Eureka
(xviii) Bureau of Indian Affairs, Redding

(4) If the owners of the property at the following locations so desire, a courtesy copy of the notice will be placed there:

(i) Hoopa Tribal Office
(ii) Young's Bar
(iii) Dad's Camp
(iv) Chub's Camp
(v) Gensaw's Landing
(vi) Notchkeo
(vii) Terwar
(viii) Bacon's Camp
(ix) Sim's Camp
(x) Mattz's Dock

§ 258.12 Fish Catch Reporting.

(a) All fishers shall cooperate and allow access to harvested fish to biologists, enforcement officers and Indian trainees for the purpose of monitoring the harvest and to check for compliance with these regulations.

(b) Fish catch data shall be compiled and summarized by the U.S. Fish and Wildlife Service and made available to all Indians. It will not be permissible to release catch information for individual fishers of the Reservation.

(c) U.S. Fish and Wildlife Service will compile in-season catch data from information obtained from fishers spot checks, landing counts, creel census, and from other information collected by state and federal officials.

§ 258.13 Identification of Persons Fishing.

Each eligible fisher shall produce for examination the applicable Indian fishers identification card required under these regulations upon demand of an enforcement officer.

§ 258.14 Enforcement.

Eligible Indians who violate these regulations or any in-season or emergency adjustment promulgated under these regulations shall be subject to prosecution before the Court of Indian Offenses for the Hoopa Valley Indian Reservation. The pertinent provisions of 25 CFR Part 11 and the Indian Civil Rights Act of 1968 apply.

(a) *Citations:* Law enforcement officers may issue citations to any elgible Indian the officer believes has commited a violation of the regulations of this Part. Such citation shall state when and where the person cited is expected to appear in court and the offense with which the person is charged.

(b) *Seizure: Confiscation of Fishing Gear and Fish:*

(1) Any net or other fishing gear used in violation of these regulations and any fish caught or possessed in violation of these regulations may be seized by a law enforcement officer.

(2) When a net or other fishing gear is seized and the owner is not present or is unknown to the enforcement officer, the officer shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the Court for a judgment forfeiting the fishing gear or fish.

(3) Upon the filing of such petition, the clerk of the Court shall set out details of the seizure citing time, place and location of such seizure and fix a time for a hearing and cause notices for unattended gear or fish to be posted and published. Notices shall be posted for fourteen (14) days at both courthouses of the Court of Indian Offenses and the Del Norte County Court House and be published in local news media having circulations on the Hoopa Valley Indian Reservation for a period of five (5) days. Notices will set forth the substance of the petition

and the time and place of such seizure and hearing.

(4) Any fishing gear or fish ordered forfeited shall be disposed of as directed by the Secretary.

(5) Any person who satisfies the court that he or she is the owner of any fishing gear or fish seized under this section may intervene in the forfeiture proceeding on behalf of the fishing gear or fish.

(c) *Arrests:*

(1) (i) Each judge of the Court of Indian Offenses is authorized to issue warrants for the arrest of an eligible Indian.

(ii) No arrest warrant may be issued except upon a written affidavit based upon reliable information or belief alleging that there is probable cause to believe that the person to be arrested has violated the regulations of this Part.

(2) A law enforcement officer may arrest any individual without a warrant if that officer has probable cause to believe that person is committing a violation of the regulations of this Part in the officer's presence.

(3) Any eligible Indian charged with a violation of the regulations of this Part may be admitted to bail in an amount set by the Court of Indian Offenses. The Court may release a prisoner on his or her own recognizance in an appropriate case.

§ 258.15 Penalties.

(a) An eligible Indian who fishes in violation of these regulations shall be subject to the following penalties:

(1) *1st Offense*

Not more than $200, or two (2) months in jail or suffer suspension of tribal fishing rights for 30 days during the fishing season or any combination of the above.

(2) *2nd Offense*

Not more than $400, or four (4) months in jail or suffer suspension of tribal fishing rights for 60 days during the fishing season or any combination of the above.

(3) *3rd Offense*

Not more than $500, or six (6) months in jail or suffer suspension of tribal fishing rights for 90 days during the fishing season or any combination of the above.

(b) An eligible Indian under 18 years of age who fishes in violation of these regulations shall be subject to the penalties set forth in this Part.

(c) Any eligible Indian who sells or attempts to sell fish caught on the Hoopa Valley Indian Reservation in violation of the regulations of this Part shall be fined not more than $500 or sentenced to jail for period not to exceed six months or both.

(d) Any eligible Indian who fishes with gear that is not properly identified and registered as required by the regulations of this Part shall be fined not more than $250 or suffer suspension of tribal fishing rights for up to 90 days during the fishing season or both.

(e) Any eligible Indian who fails to cooperate in the reporting of fish catch data as required by the Section 258.12 of this Part shall be fined not more than $250 or suffer suspension of tribal fishing rights for up to 90 days during the fishing season or both.

(f) Any eligible Indian who refuses to obey a lawful order of the Court of Indian Offenses shall be fined not more than $100 or sentenced to jail for a period not to exceed thirty (30) days or both.

(g) Any eligible Indian who fishes without an identification card or who refuses to show an identification card shall be fined not more than $100 or sentenced to jail for a period not to exceed thirty (30) days or both.

§ 258.16 Forceable Assault and Impeding a Law Enforcement Officer.

Any eligible Indian who forcibly assaults, resists, impedes, or interferes with a law enforcement officer engaged in the enforcement of the regulations of this Part shall be prosecuted in the federal courts under 18 U.S.C. § 111 and § 1114.

§ 258.17 Hoopa Valley Indian Reservation Court of Indian Offenses.

The Hoopa Valley Indian Reservation Court of Indian Offenses established under 25 CFR Part 11 has jurisdiction to try eligible Indians accused of violating the regulations of this Part and to determine whether nets and other fishing gear are forfeited.

[FR Doc. 79-4901 Filed 2-13-79; 8:45 am]

[1505-01-M]

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2618]

RULES FOR ADMINISTRATIVE REVIEW OF AGENY DECISIONS

Proposed Rulemaking

Correction

In FR Doc. 79-3989, appearing at page 7178, in the issue for Tuesday, February 6, 1979, make the following corrections:

1. On page 7178, in the third column, in "Subpart A—General Provisions", at the end of the seventeenth line the word "a" should be added.

2. On page 7179, in the first column, under "Subpart C—Reconsideration of Initial Determinations", in the second line, the word "propose" should be changed to read "proposed".

3. On page 7180, in the second column, under "Subpart A—General Provisions", in § 2618.1(a), in the third line, the word "determination" should be changed to read "determinations".

4. On page 7180, in the third column, in § 2618.2, the definition "PNGC" should be changed to read "PBGC".

5. On page 7182, in the first column, in the fourth line, "§ 2618.1(b)(5)(11)" should be changed to read "§ 2618.1(b)(5)—(11)".

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1060-7]

[40 CFR Part 65]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to Ross & Roberts, Inc. The order requires the company to bring air emissions from its coating lines in Stratford, Connecticut into compliance with certain regulations contained in the federally approved Connecticut State Implementation Plan (SIP) by March 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an aproved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before March 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, MA 02203. The State order, supporting material, and public comments received in response to this notice may

be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Attorney Michael Gurchin at 617/223-5061 or engineer Steven Fradkoff at 617/223-5610, both at the following address: U.S. Environmental Protection Agency, J.F.K. Federal Building, Room 2103, Boston, Massachusetts 02203.

SUPPLEMENTARY INFORMATION: Ross & Roberts, Inc. operates a plastic and vinyl sheet manufacturing plant at Stratford, Connecticut. The order under consideration addresses emissions form two coating lines at the facility, which are subject to Sections 19-508-18(a)(1)(i) and 19-508-23(a)(1) of the Connecticut Regulations for the Abatement of Air Pollution. The regulation limits the emission of odors and visible air pollutants, and is part of the federally approved Connecticut State Implementation Plan. The order requires final compliance with the regulation by March 15, 1979 through installation of fans, dampers, and a heat exchanger.

Because this order has been issued to a major source of odors and visible emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regualtion covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: Feburary 5, 1979.

REBECCA W. HANMER,
Acting Regional Administrator,
Region I.

[FR Doc. 79-4876 Filed 2-13-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1060-6]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Connecticut Department of Environmental Protection to Ferro Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to the Ferro Corporation. The order requires the company to bring air emissions from its fabric coating plant in Norwalk, Connecticut into compliance with certain regulations contained in the federally approved Connecticut State Implementation Plan (SIP) by April 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before March 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Divisions, EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, MA 02203. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Attorney Michael Gurchin at 617/223-5061 or engineer Steven Fradkoff at 617/223-5610, both at the following address: U.S. Environmental Protection Agency, J.F.K. Federal Building, Room 2103, Boston, Massachuetts 02203.

SUPPLEMENTARY INFORMATION: The Ferro Corporation operates a fabric coating plant at Norwalk, Connecticut. The order under consideration addresses emissions from coating machines and a fume incinerator at the facility, which are subject to Section 19-508-23 of the Connecticut Regulations for the Abatement of Air Pollution. The regulation limits the emissions of odors, and is part of the federally approved Connecticut State Implementation Plan. The order requires final compliance with the regulation by April 1, 1979 through upgrading the fume incinerator by among other things, repairing the heat exchanger and dumper system.

Because this order has been issued to a major source of odors and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated February 5, 1979.

REBECCA W. HANMER,
Acting Regional Administrator,
Region I.

[FR Doc 79-4891 Filed 2-13-79; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 463]

REVIEW RESPONSIBILITY AND AUTHORITY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS (PSROs)

PSRO Review of Intermediate Care Facilities if Medicaid State Agency Review is Ineffective or Inefficient

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: This proposal sets forth procedures and criteria for determinations of: (1) The effectiveness of the Medicaid State agency's review of the quality and necessity of health care services provided in intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICFs-MR); and (2) the efficiency of the Medicaid State agency's review of the quality and necessity of health care services provided in those ICFs and ICFs-MR that are also skilled nursing facilities (SNFs). This proposal implements section 5(d)(3) of the "Medicare-Medicaid Anti-Fraud and Abuse Amendments" (Pub. L. 95-142). The intent of these proposed regulations is to establish criteria for determining whether Medicaid agency review is effective or efficient and to provide for PSROs to assume review responsibility and authority in ICFs and ICFs-MR where Medicaid review is not effective or efficient.

DATES: Consideration will be given to written comments or suggestions received by April 16, 1979.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, Post Office Box 2372, Washington, D.C. 20013.

In commenting, please refer to HSQ-46-P. Organizations and agencies are requested to send comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks from today, in room 5231 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday from 8:30 a.m. to 5 p.m. (202-245-0950).

FOR FURTHER INFORMATION CONTACT:

Alan Reider, Division of Peer Review, Health Standards and Quality Bureau, HCFA, Parklawn Building, Room 16-A-30, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4985.

SUPPLEMENTARY INFORMATION:

REVIEW IN LONG-TERM CARE FACILITIES PRIOR TO STATUTORY AMENDMENTS

PSROs are organizations with medical expertise which are designated by the Secretary, under Title XI, Part B of the Social Security Act, to review the medical necessity, quality and appropriate level of health care services paid for by the Medicare, Medicaid and the Maternal and Child Health and Crippled Children's Services programs.

Prior to the passage of Pub. L. 95-142, PSROs were required to gradually assume review responsibility for all long-term care institutions, including SNFs, ICFs, and ICFs-MR, under section 1152(g) of the Social Security Act. Until PSROs assumed these responsibilities, other programs under Medicare and Medicaid were responsible for reviewing care provided in long-term care institutions. In particular, the Medicaid State agencies were required by section 1902(a)(26) of the Social Security Act to operate a medical review program for SNFs. An independent professional review program for ICFs was also required of Medicaid State agencies under section 1902(a)(31) of the Social Security Act.

Since the state of the art for quality review of long-term care institutions was not far advanced and PSRO funding was limited, PSROs have not assumed review functions in these institutions on a wide scale. At the same time, some States were reluctant to relinquish long-term care authority to PSROs, in view of the direct influence PSRO decisions would have on the State funding of the Medicaid services in these facilities and the untested nature of PSRO long-term care review. As a result, Congress amended the PSRO statute in 1977 to limit the role of the PSROs to review in SNFs and in those long-term care institutions where problems existed in the effectiveness or efficiency of the State reviewing mechanisms.

STATUTORY AMENDMENTS

Section 1155(a) of the Social Security Act, as amended by Pub. L. 95-142, establishes the conditions under which PSROs shall assume review responsibilities in ICFs and ICFs-MR. Section 1155(a)(7)(A)(i) of the Act provides for PSRO assumption of review responsibility in ICFs or ICFs-MR if the Secretary finds that the performance of that review function by the Medicaid State agency is ineffective. Section 1155(a)(7)(B) of the Act provides for PSRO assumption of review responsibility in those ICFs or ICFs-MR that are also SNFs if the Secretary finds that Medicaid State agency review is inefficient.

REGULATORY PROVISIONS

This proposal would add to Part 463 a new Subpart D, setting forth criteria and procedures for determinations of effectiveness and efficiency. It would also amend § 463.2(e) (3) and (4) to provide cross-references to the proposed new policies. The proposal generally reflects the respect for the Medicaid State agency's responsibility to conduct review in ICFs and ICFs-MR under an approved State plan, and provides that determinations of inefficiency or ineffectiveness will not be made without thorough documentation and appropriate consultation with the State.

Cases may arise in which HCFA discovers serious concerns about the State's review, but concludes that a determination should not be made that State review is ineffective or inefficient or that the PSRO should not assume review responsibility. In this instance, HCFA will offer the State technical advice on improving its review and may request the State to develop and implement a plan of improvement.

The major provisions and policy issues are as follows:

1. DETERMINATIONS OF EFFECTIVENESS

"Effectiveness" would be measured in terms of the Medicaid State agency's ability to carry out an acceptable utilization control program, make appropriate level of care determinations, identify deficiencies and take action to have them corrected.

Under section 1903(g) of the Act, the Secretary presently monitors the Medicaid State agency's utilization control activities in ICFs and ICFs-MR on the basis of quarterly reports from the Medicaid State agency and onsite validation surveys. If a Medicaid State agency fails to provide a satisfactory quarterly showing, the Federal share of Medicaid expenditures is reduced. (See 42 CFR Part 456.) If this financial penalty is imposed on the State for two consecutive calendar quarters, HCFA could initiate procedures to determine the effectiveness of the Medicaid State agency's review in ICFs and ICFs-MR. HCFA would consider whether these reductions reflect significant deficiencies and whether the Medicaid State agency has corrected them. If HCFA determined that the Medicaid State agency was not performing effective review in any ICFs or ICFs-MR, the PSRO would assume the responsibility and authority for review in these facilities. If HCFA found ineffective review in a significant sample of facilities, HCFA may direct the PSRO to assume responsibility for all ICFs or ICFs-MR in the State.

2. DETERMINATIONS OF EFFICIENCY

Although the procedures for determining efficiency are the same ones that are used to determine effectiveness, the criteria are different. "Efficiency" would be measured in terms of the Medicaid State agency's ability to perform its review activities in combined facilities at costs that are reasonable and in a manner that is appropriately coordinated with the PSRO's SNF review.

Consideration will be given to various factors that may affect the efficiency of Medicaid State agency review, such as:

1. Travel time to remote facilities. Geographic factors such as the size of a State, the remote location of a facility, or general problems of access to a facility may affect the ability of a State to conduct an efficient review.

2. Size of ICF or ICF-MR bed complement. Review of a facility with a small number or small percentage of ICF or ICF-MR beds in a combined facility may be inefficient. Each visit will have certain fixed administrative costs which must be spread over the cost of each review. In facilities with a small bed complement, this factor may produce a large cost of review for each bed.

3. Compatibility of State ICF review procedures with PSRO SNF review procedures. In a combined facility, both the PSRO and Medicaid State agency have review reponsibilities. Both of these review operations demand coordination with the facility's medical staff, and adequate access to the medical records. With two separate review programs, efficient conduct of these reviews requires compatibility between State ICF review procedures and PSRO SNF review procedures.

It should also be noted that, under section 1152(h) of the Social Security Act, each PSRO is required to consult with the Medicaid State agency during the early development of its formal plan for long-term care review. HCFA will issue guidance material to PSROs and State agencies urging that the efficiency of a joint review program in combined facilities should be discussed during their consultations. This guidance will also urge that if both agencies will be performing reviews in combined facilities, steps to assure good coordination should be specified in their memorandum of understanding on long-term care review.

3. PSRO ASSUMPTION OF REVIEW RESPONSIBILITIES

After a determination that Medicaid State agency review is ineffective or inefficient, the area PSRO would extend its review to the affected ICFs and ICFs-MR, or all such institutions in a State, if appropriate. Before assuming review responsibility and authority in ICFs and ICFs-MR, the PSRO would have to satisfy the requirements of Subpart A of Part 463, "Assumption of Review Responsibility by Conditional PSROs." Subpart A includes provisions for: (1) A formal plan and its review and approval; (2) modification of the PSRO's memorandum of understanding with the Medicaid State agency; (3) a phase-in timetable; and (4) public notice. The Medicaid State agency would be relieved of review responsbility and authority in the affected institutions and of the risk of financial penalties under section 1903(g) of the Act and 42 CFR Part 456, as of the first day of the calendar quarter in which the PSRO is scheduled to commence its review. The PSRO would be required to have extended its review to all affected institutions no later than one year from the time review began in the first affected institution.

42 CFR Part 463 is amended as set forth below:

1. The table of contents is amended to read as follows:

PART 463—REVIEW RESPONSIBILITY AND AUTHORITY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS (PSROs)

Sec.
463.1 Definitions.

Subpart A—Assumption of Review Responsibility by Conditional PSROs

Sec.

* * * * *

Subpart B—Conclusive Effect of PSRO Determinations on Claims Payment

* * * * *

Subpart C—Correlation of Title XI Functions with Functions Required Under Title XVIII and Title XIX of the Act

* * * * *

Subpart D—PSRO Review of Intermediate Care Facilities if Medicaid State Agency Review is Ineffective or Inefficient

463.30 Scope and purpose.
463.32 When effectiveness or efficiency will be determined by HCFA.
463.33 Determination procedures and criteria.
463.34 Notice of determination.
463.35 Reconsideration.
463.36 PSRO assumption of review responsibility and authority.
463.37 Cessation of Medicaid agency review responsibility and liability.

AUTHORITY: Secs. 1102 and 1155(a)(7) of the Social Security Act (42 U.S.C. 1302 and 1320c-4).

2. Section 463.1 is revised to read as follows:

§ 463.1 Definitions.

As used in this part, unless otherwise specified: *"Act"* means the Social Security Act (42 U.S.C. Chapter 7).

"Combined facility" means a health care institution that functions both as a skilled nursing facility and as an intermediate care facility.

"Conditional PSRO" means a Professional Standards Review Organization designated on a conditional basis in accordance with sections 1152(a) and 1154 of the Act.

"Health care institution" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under the Act.

"HCFA" stands for Health Care Financing Administration. *"Intermediate care facility (ICF)"* means a health care institution or distinct part of an institution that (a) provides health related care and services to individuals who do not require hospital or skilled nursing facility care, and (b) is certified to participate in the Medicaid program (see Part 442 of this chapter).

"Intermediate care facility for the mentally retarded (ICF-MR)" means a health care institution or distinct part of an institution (a) whose primary purpose is to provide health or rehabilitative services for mentally retarded individuals, and (b) that is certified to participate in the Medicaid program (see Part 442 of this chapter).

"Medicaid State agency" means the State agency that is established or designated to administer the State plan for medical assistance under Title XIX of the Act.

"Medicare fiscal agents" means intermediaries which are parties to agreements entered into by the Secretary pursuant to section 1816 of the Act and carriers which are parties to contracts entered into by the Secretary pursuant to section 1842 of the Act. *"MOU"* stands for memorandum of understanding.

"Phase-in timetable" means a schedule, contained in the PSRO's formal plan and updated as necessary, specifying the estimated dates when a conditional PSRO will assume review responsibilities in particular health care institutions either directly or through delegation to the health care institutions.

"Review responsibility" means (1) the responsibility of the PSRO to perform review functions prescribed under Title XI, Part B of the Act and the regulations of this part; and (2) the authority of a PSRO to make conclusive determinations regarding the medical necessity, quality, and appropriateness of health care.

"Secretary" means the Secretary of Health, Education, and Welfare or any other officer or employee of the Department of Health, Education, and

Welfare to whom the Secretary has delegated a specified authority.

"Skilled nursing facility (SNF)" means a health care institution or distinct part of an institution that (a) is primarily engaged in providing skilled nursing care or rehabilitative services to injured, disabled, or sick persons and (b) is certified to participate in Medicare or Medicaid, or both (see Part 405, Subpart K and Part 442 of this chapter).

"State survey agency" means an agency performing provider surveys under section 1864(a) of the Act.

"Title V State agency" means an agency established or designated to administer the State plan for maternal and child health and crippled children services under Title V of the Act.

3. Section 463.2 is amended to read as follows:

§ 463.2 Evaluation of capability.

* * * * * *

(e) *Extension of PSRO review activities.* * * *

(3) Except as provided in paragraph (e)(4) of this section, a PSRO shall assume review responsibility in intermediate care facilities and in public institutions for the mentally retarded only if:

(i) HCFA finds that the Medicaid State agency is not performing effective review of the quality and necessity of health care services provided in those facilities and institutions (see Subpart D of this part); or

(ii) The State requests the PSRO to assume this responsibility.

(4) A PSRO shall assume review responsibility for intermediate care facility services furnished in a combined facility if HCFA finds that performance of ICF review by the Medicaid State agency is inefficient (see Subpart D of this part).

* * * * *

4. A new Subpart D is added to read as follows:

Subpart D—PSRO Review of Intermediate Care Facilities if Medicaid State Agency Review Is Ineffective or Inefficient

§ 463.30 Scope and purpose.

This subpart implements section 1155(a)(7) of the Act, which requires PSROs to assume responsibility for reviewing the professional activities in ICFs and ICFs-MR if the Secretary finds that:

(a) The Medicaid State agency is not performing effective review in ICFs or ICFs-MR; or

(b) Medicaid State agency review of ICF services in combined facilities is inefficient.

The subpart sets forth the procedures and criteria that HCFA will use to make such findings.

§ 463.32 When effectiveness or efficiency will be determined by HCFA.

(a) *Upon request.* Any person may request that HCFA determine the effectiveness of the Medicaid State agency's review in ICFs and ICFs-MR or the efficiency of its ICF review in combined facilities. HCFA will initiate determination procedures if the requesting party provides sufficent information to indicate that there is a significant lack of effectiveness or efficiency.

(b) *Failure to meet utilization control requirements.* HCFA may initiate determinations of the effectiveness of Medicaid State agency review, if:

(1) Federal financial participation (FFP) is reduced by a substantial amount for two successive calendar quarters because of the State's failure to submit a satisfactory and valid quarterly utilization control showing (see Part 456 of this chapter); and

(2) The deficiencies leading to the reduction in FFP have not been corrected.

§ 463.33 Determination procedures and criteria.

(a) *Fact-finding activities.* HCFA will assess the effectiveness of the Medicaid State agency's review in ICFs and ICFs-MR or the efficiency of its ICF review in combined facilities:

(1) By requiring the Medicaid State agency and the PSRO to submit pertinent information; and

(2) Through meetings with the Medicaid State agency, the PSRO, and other involved parties.

(b) *Criteria for a determination of effectiveness.* When determining the effectiveness of a Medicaid State agency's review, HCFA will consider whether:

(1) The Medicaid State agency has a utilization control program in ICFs and ICFs-MR that satisfies the requirements of Part 456 of this chapter;

(2) The Medicaid State agency's review in ICFs and ICFs-MR results in appropriate level-of-care determinations in accordance with the definitions provided in Part 442 of this chapter; and

(3) The Medicaid State agency detects any significant deficiencies that exist in the quality of care provided in ICFs or ICFs-MR and takes action to have the facility correct the deficiencies.

(c) *Criteria for a determination of efficiency.* When determining the efficiency of Medicaid State agency review in combined facilities, HCFA will consider whether:

(1) The costs of review by the Medicaid State agency are significantly greater than the incremental costs would be for the PSRO to expand its review activities in these facilities; and

(2) The medicaid State agency properly contributes to the coordination of its review activities with those of the PSRO.

§ 463.34 Notice of determination.

(a) HCFA will provide timely notice to the medicaid State agency, the pertinent PSROs, and any other interested parties of:

(1) Its determination of effectiveness or efficiency;

(2) The basis for this determination;

(3) The consequences of this determination; and

(4) The right to reconsideration under § 463.35.

(b) If HCFA finds deficiencies in the medicaid State agency review system which are not so significant as to make a determination of ineffective or inefficient review, HCFA will:

(1) Request the State to develop a plan of correction; and

(2) Offer the State technical assistance on improving its review system.

§ 463.35 Reconsideration.

The Medicaid State agency, the PSRO, or the party that requested the determination may, within 30 days from the date on the notice, request HCFA to reconsider its determination, and submit additional information. HCFA will notify all interested parties whether it has granted a reconsideration. If HCFA grants a reconsideration, all parties to the initial determination may submit additional information. HCFA will notify all interested parties of its decision to affirm or reverse its original determination of effectiveness or efficiency.

§ 463.36 PSRO assumption of review responsibility and authority.

(a) IF HCFA determines that the Medicaid State agency review is ineffective or inefficient, the PSRO shall assume review responsibility as soon as it has met the requirements of § 463.2.

(b) Except in unusual circumstances, the PSRO shall phase in review in all ICFs and ICFs-MR affected by a determination under paragraph (a) of this section within 1 year of initiating review in the first of the affected facilities.

§ 463.37 Cessation of Medicaid agency review responsibility and liability.

The Medicaid State agency will be relieved of review responsibility, and of the risk of financial penalties under section 1903(g) of the Act and Part 456 of this chapter, in those ICFs and ICFs-MR in which the PSRO is to assume review, beginning on the first

day of the calendar quarter in which the PSRO initiates review in the first of the affected facilities.

(Secs. 1102 and 1155(a)(7) of the Social Security Act (42 U.S.C. 1302 and 1320c-4))

(Catalog of Federal Domestic Assistance Program No. 13.714 medical Assistance Program)

Dated: September 25, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: February 7, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-4870 Filed 2-13-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 230]

WHALING

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes; Correction

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed rulemaking; correction.

SUMMARY: In FR Doc. 79-3036 appearing at page 5916 in the issue for Tuesday, January 30, 1979, make the following corrections;

1. On page 5916, in the third column, the paragraph reading "DATE: Comments may be submitted on or before March 1, 1979." should read "DATE: Comments may be submitted on or before March 16, 1979."

2. On page 5917, in the first column, in the fourth line from the top, the word "observation" should read "observations."

3. On page 5917, in the middle column, the paragraph beginning "2. 50 CFR Part 230 is proposed to be amended by revising § 270.70-270.77" should read "2. 50 CFR Part 230 is proposed to be amended by revising § 230.70-230.77."

FOR FURTHER INFORMATION CONTACT:

William P. Jensen, Marine Mammal Program Manager, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, Telephone: 202-634-7461.

Dated: February 9, 1979.

WINFRED H. MEIBOHM,
Executive Director,

National Marine Fisheries Service.

[FR Doc. 79-4892 Filed 2-13-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PARTIALLY CLOSED MEETING OF THE PLANT VARIETY PROTECTION BOARD

Public Availability of Report

Pursuant to the Federal Advisory Committee Act, P.L. 92-463 of October 6, 1972 (86 Stat. 770), and Office of Management and Budget Circular No. A-63, revised March 27, 1974, the Plant Variety Protection Board, which held a partially closed meeting on December 12-13, 1978, (pursuant to section 10(d) of the Federal Advisory Committee Act, section 552b(c)(3) of the Government in the Sunshine Act, 5 U.S.C. 552b, and section 56, Confidential Status of Application, of the Plant Variety Protection Act, 7 U.S.C. 2321 *et seq.*) has prepared a report on the activity of this meeting.

Copies of the report have been filed and are available for public inspection at the Library of Congress, Exchange and Gift Division, Federal Advisory Committee Desk, and the Plant Variety Protection Office, National Agricultural Library, Beltsville, Maryland 20705.

Dated: February 8, 1979.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 79-4786 Filed 2-13-79; 8:45 am]

[3410-11-M]

Forest Service

ROADLESS AREA REVIEW EVALUATION, (RARE II)

Extension of Review Period

The notice of availability of the Final Environmental Impact Statement for the USDA RARE II, Roadless Area Review and Evaluation was published in the FEDERAL REGISTER on January 15, 1979 (Vol. 44, No. 10, pg. 3087).

The period for interagency review and comment by governors and members of Congress is extended to March 15, 1979.

JOHN R. MCGUIRE,
Chief.

FEBRUARY 9, 1979.

[FR Doc. 79-4850 Filed 2-13-79; 8:45 am]

[3410-03-M]

Science and Education Administration

AVAILABILITY OF RESEARCH DATA FOR REGISTRATION OF NOSEMA LOCUSTAE

The Science and Education Administration in cooperation with the U.S. Environmental Protection Agency mutually agree that *Nosema locustae* can be used for the control of grasshoppers species on rangeland. Following is the data within the U.S. Department of Agriculture which is available to potential registrants to be used toward registration.

For further information contact:

Dr. Ralph T. Ross, Science and Education Administration, U.S. Department of Agriculture, Room 447-W, Administration Building, Washington, D.C. 20250, Telephone: (202) 447-2597.

Done in Washington, D.C., this 6th day of February 1979.

RALPH J. MCCRACKEN,
Acting Director,
Science and Education.

LITERATURE PERTAINING TO NOSEMA LOCUSTAE

PUBLICATIONS

1. Henry, J. E. Extension of the host range of *Nosema locustae* in Orthoptera. Ann. Ent. Soc. Amer. 62: 452-3. 1969.

2. Henry, J. E. Protozoan and viral pathogens of grasshoppers. Thesis. 1969. (Portion dealing with *Nosema locustae.*)

3. Henry, J. E. Experimental application of *Nosema locustae* for control of grasshoppers. J. Invert. Pathol. 18: 389-94. 1971.

4. Henry, J. E. Epizootiology of infections by *Nosema locustae* Canning (Microsoporida:Nosematidae) in grasshopers. Acrida 1: 111-20. 1972.

5. Henry, J. E., Tiahrt, K. and Oma, E. A. Importance of timing, spore concentrations, and levels of spore carrier in applications of *Nosema locustae* (Microsporida: Nosematidae) for control of grasshoppers. J. Invert. Pathol. 21: 263-72. 1973.

6. Henry, J. E. and Oma, E. A. Effect of prolonged storage of spores on field applications of *Nosema locustae* (Microsporida:Nosematidae) against grasshoppers. J. Invert. Pathol. 23: 371-7. 1974.

7. Henry, J. E. and Oma. E. A. Effects of infection by *Nosema locustae* Canning, *Nosema acridophagus* Henry, and *Nosema cuneatum* Henry (Microsporida: Nosematidae) in *Melanoplus bivittatus* (Say) Orthoptera: Acrididae). Acrida 3: 223-31. 1974.

8. Henry, J. E. *Nosema locustae*: An alterantive method of grasshopper control. Proceedings: Advancements in Pesticides. State Department of Health and Sciences. Helena, Montana. pp: 16-28. 1975. (Review article.)

9. Henry, J. E., Oma, E. A., and Onsager, J. A. Relative effectiveness of ULV spray applications of spores of *Nosema locustae* Canning (Protozoa:Nosematidae) against grasshoppers. J. Econ. Ent. 71: 629-32. 1978.

10. Henry, J. E. Development of microbial agents for the control of Acrididae. Accepted 1977. (To be published as a separate issue of Revista de la Sociedad Entomologica Argentina in the proceedings of a bi-national seminar-study conference on "Recent Advances and New Trends in Acridology".) (Conference proceedings.) (Manuscript form.)

11. Henry, J. E. Microbial control with *Nosema locustae* Canning. Misc. Pub. Ent. Soc. of America 11:1 85-95. 1978. (Review article.)

12. Henry, J. E. Strategies for using pathogenic microorganisms to control noxious insects in the pasture and rangeland ecosystems. Accepted 1978. (To be published with the proceedings of workshop: Microbial Control of Insect Pests: Future Strategies in Pest Management Systems.) (Conference proceedings.) (Manuscript form.)

13. Mussgnug, G. M. and Henry, J. E. Compatibility of Malathion and *Nosema locustae* (Microsporidia:Nosematidae) in *Melanoplus sanguinipes.* Acrida. (Accepted 1978.)

14. Henry, J. E. and Oma, E. A. Protozoa: Pest control by *Nosema locustae*, a pathogen of grasshoppers and crickets. In Microbial control of insects and mites. Vol. 2. H. D. Burges, Editor. (In press.)

15. Menapace, D. M. Sackett, R. R., and Wilson, W. T. Adult honey bees are not susceptible to infection by *Nosema locustae.* J. Econ. Ent. 71: 304-6. 1978.

REPORTS

1. Hazleton Laboratories. Inc. Acute LC_{50}—Rainbow trout and bluegill sunfish *Nosema locustae.* 1974.

2. Hazleton Laboratories. Inc. Subacute oral—rats *Nosema locustae.* 1973.

3. Hazleton Laboratories. Inc. Primary skin irritation study in rabbits *Nosema locustae.* 1972.

4. Hazleton Laboratories. Inc. Acute dermal toxicity—guinea pigs *Nosema locustae.* 1973.

5. Hazleton Laboratories. Inc. Acute inhalation toxicity—rats *Nosema locustae.* 1973.

6. Hazleton Laboratories. Inc. 13-week dietary administration—rats *Nosema locustae.* 1973.

7. McEwen, Lowell. Results of *Nosema locustae* toxicity tests with pheasants and mallard ducklings. 1975.

8. Henry, J. E., Oma., E. A. and Billeb, B. Special Report G-260. Safety of *Nosema locustae:* Bioassay of tissue from rats treated with spores. 1973.
9. Henry, J. E. Tests on the viability of spores in ruminant animals. 1977.
10. McEwen, Lowell C. Progress Report: Field studies of wildlife hazards related to new range grasshopper control chemicals and other materials. 1977.
11. Heimpel, A. M. Intraperitoneal injections in mice using *Nosema locustae* spores. 1978.
12. Henry, J. E. and Onsager, J. A. Special Report: Control of grasshoppers with *Nosema locustae:* The results of a large-scale pilot test. 1978.

[FR Doc. 79-4849 Filed 2-13-79; 8:45 a.m.]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket No. 34226]

APPLICATION OF EASTERN AIR LINES, INC. FOR APPROVAL OF ACQUISITION OF CONTROL OF NATIONAL AIRLINES, INC.

Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on February 13, 1979 (44 FR 5697 January 29, 1979) is postponed to February 20, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room D, Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C.

Notice is also given that the date for service of Rebuttal exhibits and related testimony is postponed from February 9, 1979 to February 13, 1979.

Dated at Washington, D.C., February 8, 1979.

RICHARD J. MURPHY
Administrative Law Judge.

[FR Doc. 79-4812 Filed 2-13-79; 8:45]

[6320-01-M]

[Docket Nos. 33580, etc.; Order 79-2-30]

FRONTIER AIRLINES ET AL.

Applications of Frontier Airlines, Docket 33580; Braniff Airways, Docket 33629; Northwest Airlines, Docket 33672; Allegheny Airlines, Docket 33821; Continental Air Lines, Docket 33863; American Airlines, Docket 33878; Ozark Air Lines, Docket 33997; for amendments to certificates of public convenience and necessity for Denver-Detroit nonstop authority.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of February 1979.

On September 29, 1978, Frontier Airlines, Inc., filed in Docket 33580 an application for the amendment of its certificate of public convenience and necessity to permit nonstop transportation of passengers, property, and mail between Denver, Colorado, and Detroit, Michigan. It contemporaneously moved for a hearing.

Subsequently, Braniff Airways, Inc.,[1] Northwest Airlines, Inc.,[2] Allegheny Airlines, Inc.,[3] Continental Air Lines, Inc.,[4] American Airlines, Inc.,[5] and Ozark Air Lines, Inc.,[6] each filed for an amendment to its respective certificate to permit nonstop Denver-Detroit service. Each moved to consolidate its application with that of Frontier.

The Wayne County, Michigan, Board of County Road Commissioners and the Greater Detroit Chamber of Commerce filed an answer in support of the motion for hearing.

No incumbent carrier or party filed an answer in opposition to any of the applications or motions. However, Frontier moved on January 2, 1979, to dismiss its motion as moot in light of the award to it of unused Denver-Detroit authority by Order 78-11-41.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to award multiple authority on a Category II subsidy-ineligible basis, in the Denver-Detroit market and to grant the applications of Braniff, Northwest, Allegheny, Continental, American, Ozark and any other fit, willing, and able applicant, whose fitness, willingness, and ability can be established by officially noticeable data.[7] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution. Finally, we are dismissing Frontier's application in response to its motion.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[8] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[9] See our gener-

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[1] Docket 33629, Application to amend Route 9 certificate.
[2] Docket 33672, Application to amend Route 3 certificate.
[3] Docket 33821, Application to amend Route 97 and Route 97-F certificate.
[4] Docket 33863, Application to amend Route 29 certificate.
[5] Docket 33878, Application to amend Route 4 certificate.
[6] Docket 33997, Application to amend Route 107 certificate.
[7] Officially noticeable data consist of that information filed with us under section 302.24(m) of our rules. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally. On the basis of officially noticeable data, we find that Braniff, Northwest, Allegheny, Continental, American and Ozark are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.
[8] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service as well as a statement on the availability of the required fuel.
[9] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the vari-

Footnotes continued on next page

al conclusions about the benefits of multiple permissive authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the application in issue and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, we note that absent environmental evaluations submitted on behalf of any of the active applications, we are unable to reach any conclusions required by us under the National Environmental Policy Act of 1969 or the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of all applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly,

1. We direct all interested person to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of Braniff, Northwest, Allegheny, Continental, American, and Ozark, respectively, so as to authorize the carriers to engage in nonstop operations between Denver and Detroit;

2. We direct any interested persons objecting to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here to file with us and serve upon all persons listed in paragraph 7, no later than March 15, 1979, a statement of objections together with a summary of testimony, statistical data and other material expected to be relied upon to support the stated objections. Answers shall be due not later than March 26, 1979;

3. If timely and properly supported objections are filed, we will give full consideration to the matters and issues raised by the objections before we take further action; [10]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant the motions of Braniff, Northwest, Allegheny, Continental, American and Ozark to consolidate their applications in Dockets 33629, 33672, 33821, 33863, 33878, and 33997, respectively, with Frontier's application in Docket 33580;

6. We dismiss Frontier's application in Docket 33580; and

7. We shall serve this order upon all persons named in the service list of Docket 33580.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

All members concurred.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4813 Filed 2-13-79; 8:45 am]

[6320-01-M]

[Docket No. 34277; Order 79-2-58]

MILLARDAIR LTD.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of February 1979.

Millardair Limited is the holder of a foreign air carrier permit [1] authorizing charter flights of persons and their accompanied baggage, and planeload charters of property, between any point or points in Canada and any point or points in the United States, subject to conditions, one of which precludes the use of large aircraft.

By application filed with the Board on December 19, 1978, Millardair Limited requests amendment of its permit to authorize large aircraft [2] Charter operations between Canada and the United States pursuant to the Nonscheduled Air Services Agreement signed by the Governments of Canada and the United States on May 8, 1974.

FITNESS OF THE APPLICANT

Millardair Limited began charter service between Canada and the United States early in 1964.[3] The Canadian Air Transport Commission has issued Millardair a Class 9-4 license (No. ATC 315/62(CF), dated February 25, 1977,) which authorizes the holder to operate international charter commerical air services. The license contains a restriction which limits the holder to the use of aircraft in Groups A, C and D (limited to DC-3 aircraft and to one Hansa aircraft in Group D) and Group E (restricted to two DC-4

Footnotes continued from last page
ety, quality and price of air transportation services."

[10] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[1] Order 74-12-19, approved November 27, 1974, amended Millardair's permit for an indefinite period.

[2] "Large aircraft" are defined in the Nonscheduled Air Services Agreement as aircraft having both (a) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds and (b) a maximum authorized takeoff weight on wheels greater than 35,000 pounds. "Small aircraft" are defined as aircraft which are not "large aircraft".

[3] See Order E-20472, adopted January 20, 1964.

cargo only aircraft).[4] The Canadian Department of Transport, Civil Aviation Branch, has issued Millardair Operating Certificate No. 1550, dated August 8, 1978, which certifies that the carrier is adequately equipped and able to conduct safe operations.

The applicant's balance sheet as of december 31, 1977 shows current assets of $360,039, total assets of $1,267,363, current liabilities of $831,558 and shareholders' equity of $435,805. The company reports earnings of $109,839 for calendar year 1977 with total retained earnings of $422,295. The applicant states that since its inception it has been able to meet its current financial obligations and has never defaulted on its transportation commitments. Our records show that within the last five years (when its permit was last amended), it has not incurred any safety or tariff violations nor experienced any aircraft accidents.

PUBLIC INTEREST

The applicant relies on the Nonscheduled Air Services Agreement signed by the Governments of Canada and the United States of America on May 8, 1974, as the basis for the grant of the requested authority. By diplomatic Note No. 722, dated December 7, 1978, the Embassy of Canada indicated that the Canadian Government has granted an amendment to Millardair's Canadian Class 9-4 license to include authority to operate large aircraft within the meaning of the Agreement. The applicant plans to continue its charter commerical air services from Toronto, the largest city in Canada, carrying persons and cargo to various points in the United States. Millardair's charter demand includes all-cargo operations for the motor vehicle industry to supply production lines on both sides of the border, often on an urgent basis. The applicant has utilized DC-3 aircraft and has now acquired two DC-4's for its larger cargo operations, which will result in significant savings to the Canadian branches of several U.S. companies.[5]

OWNERSHIP AND CONTROL

The citizenship of the owners of the beneficial interest in Millardair and all of its officers and directors is Canadian. The only debt of the applicant is in the form of loans from the shareholders of the company. Neither the applicant nor any of its officers, directors or shareholders who hold more than five percent of the issued shares of Millardair hold any shares or interest in any other air carrier.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

1. Millardair Limited is substantially owned and effectively controlled by nationals of Canada;

2. It is in the public interest to amend the foreign air carrier permit held by Millardair Limited to authorize it to engage in charter foreign air transportation of persons and their acompanied baggage and planeload charter flights of property between any point or points in Canada and any point or points in the United States without restrictions as to aircraft size (except as may be specified in its Canadian license).

3. The public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the speciment form of the permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

4. Millardair Limited is fit, willing, and able properly to perform the foreign air transportation described in the attached speciment permit and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

5. The public interest does not require an oral evidentiary hearing on the application; [6]

6. The amendment of Millardair Limited's foreign air carrier permit would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of the Board's Regulations; [7] and

7. Except to the extent granted, the application of Millardair Limited in Docket 34277 should be denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) subject to the disapproval of the President, issue an amended foreign air carrier permit to Millardair Limited in the speciment form attached;

2. Any interested person objecting to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached speciment permit shall, no later than March 5, 1979, file with the Board and serve on the persons named in paragraph 5, a statement of objections specifying the part of parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings. Answers to objections may be filed until March 15, 1979;

3. We will give full consideration to timely filed and properly supported objections before taking further action, except that we may proceed to enter an order in accordance with the tentative findings and conclusions stated here if we determine that there are no factual issues present that warrant the holding of an oral evidentiary hearing;[8]

4. In the event no objections are filed, all further procedural steps will be deemed waived, and the Secretary shall enter an order which (1) shall make final the tentative findings and conclusions stated here, and (2) subject to the disapproval of the President pursuant to section 801 (a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We shall serve this order upon Millardair Limited, the Ambassador of Canada in Washington, D.C., and the Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and shall transmit a Copy to the President of the United States.

[4] Under Canadian Air Transport Regulations, aircraft are grouped according to the maximum authorized takeoff weight as follows: Group A—not greater than 4,300 pounds; Group C—greater than 7,000 pounds, but not greater than 18,000 pounds; Group D—greater than 18,000 pounds, but not greater than 35,000 pounds; Group E—greater than 35,000 pounds, but not greater than 75,000 pounds.

[5] General Motors, Ford, Chrysler and IBM are among the corporations listed by the applicant for which it provides cargo charter service.

[6] Any interested person objecting to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached amended permit shall be allowed twenty (20) days from the date of service of this order to file such objection.

[7] Our tentative findings are based on the fact that amendment of Millardair's permit to authorize use of large aircraft will not result in any significant increase in fuel consumption, since multiple trips in smaller DC-3 aircraft will not be required.

[8] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[9]
Secretary.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.,
SPECIMEN PERMIT

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

Millardair Limited (Canada) is authorized, subject to the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the board, to engage in charter foreign air transportation as follows: Charter flights of persons and their accompanied baggage, and planeload charter flights of property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada and in the United States, as are now or may be prescribed in Annex B of the Nonscheduled Air Services Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations, or supersessions to that Agreement.[1]

This permit shall be subject to the following terms, conditions, and limitations:

(1) The authority of the holder to perform United States originating large aircraft charter flights shall be subject to the provisions of Part 214 of the Board's Economic Regulations, other regulations of the Board governing tours or charters, and all amendments and revisions adopted by the Board to its charter regulations. The authority of the holder to perform United States-originating small aircraft charter flights shall be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group. The authority of the holder to perform Canadian-originating charter flights shall be subject tot he Air Carrier Regulations of the Canadian Transport Commission. The holder shall, nevertheless, not be authorized to provide charters of a type other than as authorized by Annex B of the Nonscheduled Air Serivces Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations or supersessions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey includes a prior, subsequent, of intervening movement by air (except for the movement of passangers independently of any group) to or from a point not in the United States or Canada: *Provided,* that the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974 exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided,* that the Board may authorize the performance of charter flights not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter is one-way, round-trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (i) "large aircraft" flights of persons; (ii) "large aircraft" flights of property; (iii) "small aircraft" flights of persons; and (iv) "small aircraft" flights of property.[2]

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation:

(i) flights utilizing aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(ii) flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement which establishes obligations or privileges (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when such flight serve either (a) a Canadian terminal point on such route, or (b) any Canadian intermediate point authorized for service on such route by such foreign air carrier permit.

(4) The holder may grant stopover privileges at any point of points in the United States only to passengers and their accompanied baggage moving (a) on a Canadian-originating large aircraft flight operating under a contract for charter transportation to be provided solely by the holder (even if a different aircraft is used), or (b) on a Canadian-originating small aircraft flight operating under a contract for round-trip charter transporation to be provided solely by the holder and as to which the same aircraft stays with the passengers throughout the journey, *Provided,* that the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those in effect for any U.S. air carrier in the same foreign air transportation: *Houever,* this limitation shall not apply to a tariff filed after the intitial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

(6) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(7) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(8) The holder shall not operate any aircraft under the authority granted by this permit unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(9) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(10) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(11) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liabili-

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[9] All Members concurred except Member O'Melia who did not vote.

[1] Annex B(II)(B) and (III)(B) presently authorize the following types of large and small aircraft charters originating in Canada: Single Entity Passenger, Single Entity Property, Pro Rata Common Purpose, Advance Booking, and Inclusive Tour, and split passenger charters of the types set forth, subject to Canadian Transport Commission Regulations which presently do not permit Advance Booking Charters for small aircraft. Annex B(II)(A) presently authorizes the following types of large aircraft charters originating in the United States: Single Entity Passenger, Single Entity Property, Pro Rata Affinity, Mixed (Entity/Pro Rata), Inclusive Tour, Study Groups, Overseas Military Personnel, and Travel Group, and split passenger charters of the types set forth. United States originating small aircraft charters are governed by the definition set forth in condition (1)—see Anex B(III)(A).

[2] Annex A(I)(A) of the Nonscheduled Air Services Agreement between the United States and Canada, signed May 8, 1974, defines a "large aircraft" as an aircraft having both: (1) a maximum passenger capacity (as determined by CAB Regulations) of more than 30 seats or a maximum payload capacity (as determined by CAB Regulations) of more than 7,500 pounds; and (2) a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) greater than 35,000 pounds. A "small aircraft" is defined as an aircraft which is not a "large aircraft."

ty insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(12) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall become effective on ———. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment which shall have the effect of eliminating the charter foreign air transportation here authorized from the transportation which may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation here authorized, the authority granted shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder, or (3) upon the termination or expiration of the Nonscheduled Air Services Agreement between the United States and Canada, signed May 8, 1974: *Provided*, that clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation here authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on ———.

———,
Secretary.

[FR Doc. 79-4814 Filed 2-13-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUSES

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since June 30, 1978, for which tabulations were completed between January 1, 1979 and January 31, 1979.

Dated: February 8, 1979.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

State/place or special area	County	Date of census	Population
Arkansas: Siloam Springs city	Benton	August 29	7,105
Illinois:			
Schaumburg village	Cook and DuPage	September 13	50,639
Wheaton city	DuPage	October 3	40,846
Wisconsin: Barnes town	Bayfield	November 6	562

[FR Doc. 79-4800 Filed 2-13-79; 8:45 am]

[3510-12-M]

Industry and Trade Administration

DEPARTMENT OF THE INTERIOR, ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before March 6, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

DOCKET NUMBER: 79-00119. APPLICANT: Department of the Interior, U.S. Geological Survey, Topographic Division, 12201 Sunrise Valley Dr., National Center (No. 525), Reston, VA 22092. ARTICLE: Stereoscopic Plotting System Model PG-2 with Automatic Coordinatograph Table and Accessories. MANUFACTURER: Kern and Co. Ltd., Switzerland. INTENDED USE OF ARTICLE: The article is intended to be used for studies of aerial photographs of the earth's surface used in stereopairs which permit accurate measurement of the earth's features. The objectives pursued in the course of the investigation are obtaining information permitting compilation of data which may be combined to produce accurate topographic maps.

APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00130. APPLICANT: University of Massachusetts, Department of Microbiology, Amherst, MA 01003. ARTICLE: Electron Microscope, Model JEM 100S and accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used in the following ongoing research projects:

(1) Cytochemical analysis of gliding microorganisms of the human oral cavity,

(2) Cytology of the adrenal medulla and its catecholamine secretory vesticles,

(3) Cytological studies of age changes in the surface membrane in the nematode, *caenorhabditis briggsae*,

(4) Plasma membrane studies in *dictyostelium discoidium*,

(5) Cytological analysis of the red blood cell membrane as a function

structural transitions induced by scanning calorimetry,

(6) Electron microscopy of RNA-protein interactions,

(7) Studies of the pollen wall of the ranalean complex.

(8) Cytological characterization of cell types from cultured endothelial and smooth muscle cells,

(9) The development of photosynthetic reaction center in the green photosynthetic bacteria,

(10) Migration of spriochetes through mammalian tissues,

(11) Genetics of *bacillus thuringiensis* and its phages,

(12) Genetic analysis of the interactions between a unique RNA bacteriophage and its bacillus host,

(13) Electron microscopy of African pathogenic protozoa,

(14) Electron microscopy of selected bacterial viruses,

(15) Electron microscopy of genetic material, and

(16) Cytology of the cell envelop of *pseudomonas cepacia.*

In addition, the article will be used to teach graduate, undergraduate students and faculty the newer techniques in ultrastructural identification of biological material in the course: Microbiol 750. Electron Microscopy. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 19, 1979.

DOCKET NUMBER: 79-00132. APPLICANT: University of Alabama in Birmingham, University Station, Birmingham, Alabama 35294. ARTICLE: LKB 2088 Ultrotome V Ultramicrotome and accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for investigations that include ultrastructural studies on normal and pathologic human and animal tissues, cyto and histochemical studies on enzyme antigens and subcellular organelle localization in cells and tissues, and subcellular changes in cells induced by changes in their biochemical and physical environments. The objective of these investigations is to further basic knowledge on cell and tissue ultrastructure and to reveal at the ultrastructural level, the localization of enzymes, cations, mucosubstances and immunologic antigens, and their distribution in cells and tissues developing under normal and pathological conditions. In addition, the article will be used in courses entitled Ultrastructure and Cytochemistry which will involve a study of general principles of techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 19, 1979.

DOCKET NUMBER: 79-00133. APPLICANT: George Washington University Medical School, 2300 I Street, NW., Washington, DC 20037. ARTICLE: Electron Microscope, Model JEM-100S. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for ultrastructural studies of biological materials, specifically cell membranes of various types. Experiments to be conducted involve the effects of dietary fibers on the gastrointestinal tract at an ultrastructural level and rheological studies of sickle cell anemia. The article will also be used in the course Electron Microscopy in Cell Biology to introduce graduate and/or medical students to the theory and practical aspects of electron microscopy with particular respect to biological samples. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 19, 1979.

DOCKET NUMBER: 79-00134. APPLICANT: University of Alabama in Birmingham, 1808 - 7th Avenue South, Room 801, Birmingham, Alabama 35294. ARTICLE: LKB 2088 Ultrotome V Ultramicrotome and LKB 14800-3 CryoKit and CryoKit Tools. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used to prepare ultrathin frozen sections of isolated rat pancreatic islets. These frozen thin sections will be analyzed by immunocytochemical labelling techniques in an effort to identify and characterize the molecular components of the insulin release machinery contained within these cells. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 19, 1979.

DOCKET NUMBER: 79-00136. APPLICANT: Loma Linda University Medical Center, 11234 Anderson Street, Loma Linda, Calif. 92350. ARTICLE: AECL Therac 20 - Saturne Linear Accelerator. MANUFACTURER: Atomic Energy of Canada Ltd., Canada. INTENDED USE OF ARTICLE: The article is intended to be used for clinical research in which some of the patients treated may be entered into local or national protocol studies. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 22, 1979.

DOCKET NUMBER: 79-00131. APPLICANT: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. ARTICLE: Backward-Wave Oscillator Tube, Type RWO-50, Power Output 150 mW. MANUFACTURER: Siemens AG, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used in radio astronomy investigations for observation of the emission of various rotational-state spectral line emissions, including the water-vapor line at 22.235 GHz; the array of ammonia lines at 23.694, etc. GHz; the methanol lines at 24.010, etc. GHz; and a variety of other lines in the region between 20.0 and 27.0 GHz. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 19, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4857 Filed 2-13-79; 8:45 am]

[3510-25-M]

NORTHWESTERN UNIVERSITY, ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before March 6, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

DOCKET NUMBER: 79-00111. APPLICANT: Northwestern University, 619 Clark Street, Evanston, Illinois 60201. ARTICLE: High Resolution Fourier Transform Multinuclear Magnetic Resonance Spectrometer System, Model JNM/FX-90Q and Accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for a variety of chemistry studies including the following:

(1) Studies of inorganic complexes by multinuclear NMR spectroscopy,

(2) Investigation of metalloporphyrins in which the metals are iron, cobalt manganese, and chromium,

(3) Actinide Organometallic Chemistry,

(4) Syntheses of uranium hexamethoxide and mixed methoxy uranium (VI) fluorides from uranium hexafluoride,

(5) Magnetic resonance spectra of metal nuclei in transition metal cluster complexes,

(6) Biorganic applications, i.e., study of the environment of transition metal ions in porphyrins and related systems,

(7) Determination of imidzole pK_a's in different polymer matrices,

(8) Structure-function studies in mitochondrial cytochrome *c*,

(9) Effect of inversional motion on spin-lattice relaxation,

(10) Nitrogen-15 relaxation by Spin-(Internal Rotation), and

(11) Kinetics of Processes with Long Correlation times.

APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00112. APPLICATION: University of Virginia, Department of Anatomy, 1300 Jefferson Park Avenue, Box #439, Charlottesville, Va. 22908. ARTICLE: Electron Microscope, Model JEM-100CX/SEG and Accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for electron microscopic studies of the following:

(1) Formation of myocardial T-axial tubules and sarcoplasmic reticulum—a thorough study of the development, in mammalian heart, of the two major "membrane systems" of cardiac muscle cells,

(2) Morphology and cytochemistry of N-SR and J-SR—study which will document a number of features of SR, including its morphological variations among different species of mammals, the geometric makeup of couplings, and the types of, and time of development, of various enzymatic activities within the SR,

(3) Determination of the ionic content (Na^+, K^+, Cl^- Ca^{--}) of the tubular systems and various organelles of muscle cells, and

(4) Development of the mature pattern of insulin receptors in cells from normal and diabetic mice.

In addition, the article will be used to train graduate students, post-doctoral fellows, residents, and medical students in the use of an electron microscope.

APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00113. APPLICANT: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. ARTICLE: Double Flash Photographic System. MANUFACTURER: University of Sheffield, United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to investigate the rate of fuel nitrogen emission under atmospheres of varying temperature, composition and relative velocity. The experiments will be conducted to determine the size and velocity of an atomized liquid fuel under pyrolysis and combustion conditions and their relationship to nitrogen oxide pollution. The article will also be used for educational purposes in the courses Graduate Thesis (10 ThG), Graduate Research Project (10.91). APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00114. APPLICANT: The Methodist Hospital, 6516 Bertner, Cullen Eye Institute, Houston, Texas 77030. ARTICLE: Electron Microscope, Model JEM-100CX and Accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used to probe minimally denatured, high resolution molecular details of human and experimental ocular tissue. Specifically, the following will be studied: molecular aspects of minimally denatured photoreceptor membranes; membrane and organelle changes associated with retinitis pigmentosa; retinal abnormalities related to defined human genetic lesions; collagen and mucopolysaccharide abnormalities in human corneal keratoconus; surface changes associated with intraocular lens rejections. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00115. APPLICANT: The Mercy Hospital of Pittsburgh, Pride & Locust Sts., Pittsburgh, Pennsylvania 15219. ARTICLE: Electron Microscope, Model JEM-100S and Accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for studying the ultrastructural morphology of a variety of biological materials; human tissues obtained by surgical biopsy and autopsy to aid in the diagnosis of various kidney, muscle, and neoplastic diseases. The article will also be used diagnostically in the examination of peripheral blood lymphocytes from leukemic patients. In addition to the diagnostic information provided by ultrastructural examination, analysis should lead to new insights to the nature of some of the less well-studied disorders encountered. The article is also important to specific research projects: (1) ultrastructural high-resolution autoradiographic analysis of viral-induced transformation of skeletal muscle cells differentiating *in vitro* (2) ultrastructural analysis (including high-resolution histochemistry and immunocytochemistry) of tumor cell colonies differentiating *in vitro*. In addition to training members of the Pathology Department in ultrastructural techniques, the article will be used to train any physicians in approved residency training programs. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00116. APPLICANT: University of Nebraska-Lincoln, Department of Veterinary Science, Institute of Agriculture and Natural Resources, Lincoln, Nebraska 68583. ARTICLE: LKB 2128-010 Ultrotome IV Ultramicrotome and Accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for ultrathin sectioning of different types of animal and plant tissues and other biological materials such as bacteria, parasites, viruses cultured cells, and tissues which have been embedded in epoxy resins. These specimens will be studied to further basic knowledge of cell and tissue ultrastructure and to provide at the fine structural level the enzymes and hormone localization and distribution in cells and tissue under normal, pathological and artifically induced disease conditions both *in vivo* and *in vitro*. The article will also be used in courses in Veterinary Histology and Fine Structures and Ultrastructural Pathology to train students and trainees in the proper use and application of electron microscopy techniques. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00117. APPLICANT: University of California, Department of Chemistry, Santa Barbara, California 93106. ARTICLE: V.G. Micromass MMZAB 2-F High Resolution Mass Spectrometer. MANUFACTURER: Vacuum Generators Micromass Co., United Kingdom. INTENDED USE OF ARTICLE: The foreign article is intended to be used in studies that include the formation of metastable ion by ionization of neutral compounds, ion-molecule reactions formed via chemical ionization of organic or inorganic compounds by the MIKES technique and in new research programs including analytical applications in the marine science area, structural determination and amino acid sequencing in biological systems and ion structure determination of products of ion-molecule reactions. The article will also be used in present programs, such as, studies involving kinetics of gas phase ions, the thermodynamics of gas phase ions, and the theory of gas phase ion-molecule reactions. APPLICATION RECEIVED BY COMMIS-

SIONER OF CUSTOMS: January 9, 1979.

DOCKET NUMBER: 79-00120. APPLICANT: University of California, Lawrence Berkeley Laboratory, 1 Cyclotron Road, Berkeley, CA 94720. ARTICLE: Electron Microscope, Model EM 400 and accessories. MANUFACTURER: Philips Electronics Instruments NVD, The Netherlands. INTENDED USE OF ARTICLE: The article is intended to be used for studies of inorganic materials, and to relate these findings to their macroscopic properties. In addition, the article will be used in Materials Science and Engineering courses (Electron Diffraction and Microscopy (MSE 213 A), Electron Diffraction and Microscopy Laboratory (MSE 213L), and Advanced Electron Microscopy (MSE 213 B)) to familiarize students with the best available techniques in transmission electron microscopy for research in materials science. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 9, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4856 Filed 2-13-79; 8:45 am]

[3510-25-M]

U.S. EASTERN REGIONAL RESEARCH CENTER, ET AL.

Applications For Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before March 6, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Consititution Avenue, N.W. Washington, D.C. 20230.

DOCKET NUMBER: 79-00118. APPLICANT: U.S. Eastern Regional Research Center, 600 East Mermaid Lane, Philadelphia, Pennsylvania 19118. ARTICLE: Electron Microscope, Model EM 10B, and Accessories. MANUFACTURER: Carl Zeiss, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used to carry out ultrastructural investigations involving detailed studies of the morphology of agricultural products and byproducts as related to their physical and biochemical properties. Investigations in progress involve host-pathogen relationships in the potato, changes in ultrastructure of meat tissues as related to thermal and mechanical stress, determination of location of specific proteins and enzymes associated in the lactating cells of bovine mammary tissue using ferritin label antibodies, and location of the polymer graft site in polymerized leathers. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1978.

DOCKET NUMBER: 79-00121. APPLICANT: University of Texas Medical Branch at Galveston, Texas, UMED 9-12920. Galveston, Texas 77550. ARTICLE: LKB 2088- Ultrotome V Ultramicrotome, and Accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for investigations that include ultrastructural studies on pathologic human tissues and normal and pathologic animal tissues, cyto- and histochemical studies on enzymes and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in cellular biochemical and physiological environments. One objective is to reveal, at the ultrastructural level, the enzyme localization and distribution in cells and tissues developing under normal and pathological conditions. A further objective to reveal what, if any, diagnostic correlates exist between light and electron microscopic examination of pathological tissues. Moreover, the study of host-parasite interactions will reveal at the ultrastructural level morphological alterations in cellular and subcellular components as a result of parasite infestation. The objective pursued in the course of these investigations is to understand early pathological alterations in tissues (as induced in animal models) and to correlate these changes with clinical alterations seen in human pathologic tissues. By understanding early alterations we may begin to formulate preventive treatments in human diseases. The article will also be used in the residency training program offered by the Pathology Department and in the graduate training program of the School of Biomedical Sciences wherein the residents and graduate students will be exposed to the techniques of electron microscopy. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00122. APPLICANT: Massachusetts Institute of Technology, Cambridge, MA 02139. ARTICLE: UCL Flexible Boundary True Triaxial Apparatus and UCL Directional Shear Apparatus with Accessories. MANUFACTURER: University College, United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to investigate the anisotropic stress-strain strength behavior of soils under generalized states of stress. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00123. APPLICANT: National Institutes of Health, Bldg. 2, Room 322, 9000 Rockville Pike, Bethesda, Maryland 20014. ARTICLE: Electron Microscope, Model EM 400 HMG with Accessories. MANUFACTURER: Philips Electronic Instruments NVD, The Netherlands. INTENDED USE OF ARTICLE: The article is intended to be used for the study of the structures of enzymes and protein-nucleic acid complexes. For the study of such complex molecules, particularly for the detailed study of the mechanism of enzyme action, detailed information on the internal structure of individual proteins, or the interaction between protein and nucleic acid is essential. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00124. APPLICANT: Carnegie Institution of Washington, 2801 Upton St., N.W., Washington, D.C. 20008. ARTICLE: Rotating Anode X-Ray Generator and Accessories. MANUFACTURER: Rigaku, Japan. INTENDED USE OF ARTICLE: The article is intended to be used to determine by experiment the mineralogical and physical properties of the earth's mantle. This involves an x-ray diffraction study at high pressures utilizing the MBC (megarbar pressure cell), including crystal structure determination and accurate specific volume measurements. Doctoral candidates and post-doctoral fellows will be using the article in thesis experiments and in gereral research. The objectives are to provide training in the field of high pressure geophysics and to produce research data useful to mankind. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00125. APPLICANT: University of Colorado, Department of Geological Sciences, Boulder, Colorado 80309. ARTICLE: Mi-

crothermometry Apparatus. MANUFACTURER: Chaixmeca Ltd., France. INTENDED USE OF ARTICLE: The article is intended to be used for studies of fluid inclusions in vein materials from ore deposits to determine the salinity of the fluids and to determine temperatures of formation of the ore deposits. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

DOCKET NUMBER: 79-00126. APPLICANT: Viral and Rickettsial Disease Laboratory, California State Department of Health Services, 2151 Berkeley Way, Berkeley, CA 94704. ARTICLE: Electron Microscope, Model H-500L with accessories. MANUFACTURER: Hitachi Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for the identification of viral agents in specimens submitted from public health and medical care agencies to the State Laboratory. It will be used primarily for the identification of those agents which cannot be grown in the laboratory, thus precluding the use of standard methods of culture of identification of viral agents. Some of the important human viruses for which identification has become possible by the application of high resolution immunoelectron microscopy technics include: (1) the causative viruses of widespread outbreaks of acute nonbacterial gastroenteritis; (2) rotavirus, the causative agent of infantile gastroenteritis; and (3) hepatitis A virus, the agent of common infectious hepatitis. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: January 15, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4855 Filed 2-13-79; 8:45 am]

[3510-25-M]

UNIVERSITY OF CHICAGO, ARGONNE LABORATORY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00336. APPLICANT: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Ill. 60439. ARTICLE: Microwave Plasma Detector, Model MPD 850/AG and accessories. INTENDED USE OF ARTICLE: The article is intended to be used in research to accumulate sufficient information on the chemical nature of coals and related materials so that a logical diagenesis of biological materials to peat, lignite, sub-bituminous, bituminous, and anthracite coals can be established and correlated with the chemical structure of petroleum, shale oils, and Fischer-Tropsch products. The article will also be used at times for demonstration purposes for classes on chromatography.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides high resolving power with the capability of simultaneous detection of several elements over a wide linear range and the capability of detecting deuterium, Hydrogen, Oxygen, Fluorine, and Chlorine in the range 0.1 to 1.0 nanograms per second. The National Bureau of Standards advises in its memorandum dated January 12, 1978 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or combination of domestic instruments of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4858 Filed 2-13-79; 8:45 am]

[3510-25-M]

UNIVERSITY OF PUERTO RICO

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00358. APPLICANT: University of Puerto Rico, Mayaguez Campus, Mayaguez, P.R. 00708. ARTICLE: Centrifugal force apparatus and accessories. MANUFACTURER: Experimental Engineering Equipment Lt., Canada. INTENDED USE OF ARTICLE: The article is intended to be used for educational purposes in the course Engineering 242-Dynamics, Study of the Principles of Dynamics.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article is a motor driven device for the demonstration of dynamic force with a capability for measurement of rotating masses by direct weighing. The National Bureau of Standards advises in its memorandum dated January 10, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4860 Filed 2-13-79; 8:45 am]

[3510-25-M]

UNIVERSITY OF ROCHESTER

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially Section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00451. APPLICANT: University of Rochester, Nuclear Structure Research Laboratory, 271 East River Road, Rochester, N.Y. 14627. ARTICLE: Particle Acceleration tube. Manufacturer: Dowlish Developments Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to upgrade an existing Van de Graaf accelerator which is being used in a variety of nuclear studies. The projects being conducted will involve the following:

I. Light Ion Studies:

A. Multi-Step Processes in the Interpretation of the $^{28}Si(d, ^{3}He)\ ^{27}Al$ Reaction,

B. Study of the (^{3}He,n) and (^{3}He,p) Reactions on ^{27}Al and ^{28}Si to Analogue Final States,

C. Study of the $^{28}Si(d,py)$ Reaction, etc.

II. Heavy Ion Reactions:

A. The transition between Light- and Heavy-Ion Elastic Scattering,

B. Unnatural Parity Levels Populated in the $^{16}O(^{6}Li,d)^{20}Ne$ Reaction,

C. Further Attempts to Resolve the Double Near 6.3MeV in ^{22}Ne in the Reaction $^{16}O(^{6}Li,d)^{22}Ne$.

III. Measurement of Total Muon-Capture Rates in ^{232}Th, ^{235}, ^{238}U and ^{239}Pu.

ADVICE SUBMITTED BY THE NATIONAL BUREAU OF STANDARDS ON: January 16, 1979.

ARTICLE ORDERED: January 10, 1977.

DOCKET NUMBER: 78-00452. APPLICANT: University of Rochester, Nuclear Structure Research Laboratory, 271 East River Road, Rochester, N.Y. 14627. ARTICLE: Particle Acceleration tube. MANUFACTURER: Dowlish Developments Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to upgrade an existing Van de Graaf accelerator which is being used in a variety of nuclear studies. The projects being conducted will involve the following:

I. Light Ion Studies:

A. Multi-Step Processes in the Interpretation of the $^{28}Si(d, ^{3}He)\ ^{27}Al$ Reaction,

B. Study of the (^{3}He,n) and (^{3}He,p) Reactions on ^{27}Al and ^{28}Si to Analogue Final States,

C. Study of the $^{28}Si(d,py)$ Reaction, etc.

II. Heavy Ion Reactions:

A. The transition between Light- and Heavy-Ion Elastic Scattering,

B. Unnatural Parity Levels Populated in the $^{16}O(^{6}Li,d)^{20}Ne$ Reaction,

C. Further Attempts to Resolve the Double Near 6.3MeV in ^{22}Ne in the Reaction $^{16}O(^{6}Li,d)^{22}Ne$.

III. Measurement of Total Muon-Capture Rates in ^{232}Th, ^{235}, ^{238}U and ^{239}Pu.

ADVICE SUBMITTED BY THE NATIONAL BUREAU OF STANDARDS ON: January 22, 1979.

ARTICLE ORDERED: June 12, 1978.

COMMENTS: No comments have been received with respect to any of the foregoing applications. DECISION: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. REASONS: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the National Bureau of Standards (NBS) in the respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4854 Filed 2-13-79 8:45 am]

[3510-25-M]

SRI INTERNATIONAL

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

DOCKET NUMBER: 78-00331. Applicant: SRI International, 333 Ravenswood Avenue, Menlo Park, Calif. 94025. ARTICLE: Lambda Physik Excimer EMG 500 Multigas Laser. MANUFACTURER: Lambda Physik, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used to supply problems associated with the U.S. Department of Energy's advanced laser programs; specifically the study of the photolysis of OCSe under conditions of very high laser fluxes. The article will also be used by three graduate students from the Stanford Electrical Engineering Department for part of the research contained in their Ph.D. dissertation.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides a minimum energy output of 100 millijoules using argon fluoride as the laser medium. The National Bureau of Standards advises in its memorandum dated December 22, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-4859 Filed 2-13-79; 8:45 am]

[3510-13-M]

National Bureau of Standards

COMMERCIAL STANDARD

Action of Withdrawal

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Commercial Standard CS 248-64, "Vinyl-Coated Glass Fiber Insect Screening and Louver Cloth."

This withdrawal action is being taken for the reason that CS 248-64 is adequately covered by the American Society for Testing and Materials' standard ANSI/ASTM D 3656-78, "Standard Specification for Insect Screening and Louver Cloth Woven from Vinyl-Coated-Glass Fiber Yarn," and duplication is inappropriate and not in the public interest. This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of December 22, 1978 (43 FR 59866) to withdraw this standard.

The effective date for the withdrawal of this standard will be April 16, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: February 9, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-4793 Filed 2-13-79; 8:45 am]

[3510-13-M]

SIMPLIFIED PRACTICE RECOMMENDATION

Action of Withdrawal

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Simplified Practice Recommendation R 114-63, "Gummed Kraft Paper Sealing Tape."

This withdrawal action is being taken for the reason that R 114-63 is technically inadequate, and, in view of the existence of up-to-date Federal Specification PPP-T-45D, "Tape, Gummed, Paper, Reinforced and Plain, for Sealing and Securing" and industry literature for sealing tape, revision would serve no useful purpose. This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of December 26, 1978 (43 FR 60182) to withdraw this standard.

The effective date for the withdrawal of this standard will be April 16, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: February 9, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-4794 Filed 2-13-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

PACIFIC FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Scientific and Statistical Committee, of the Pacific Fishery Management Council, established under Section 302(g) of the Fishery Conservation and Management Act (Public Law 94-265), will meet to discuss: (1) Salmon Management Plan for 1979; (2) development of comprehensive salmon, squid, groundfish, billfish, Dungeness crab, jack mackerel, pink shrimp and anchovy FMPs; (3) operational/procedural matters of the Council, including Advisory Panel and Management Plan Development Team activities; (4) other committee business.

DATE: The meeting will convene on Wednesday, March 7, 1979, at 10:00 a.m. and will adjourn on Thursday, March 8, 1979, at approximately 5:00 p.m. The meeting is open to the public. A public comment period will begin at 3:30 p.m. on March 7, 1979.

ADDRESS: The meeting will take place at the Eureka Inn, 7th and F Streets, Eureka, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

Dated: February 9, 1979.

WINFRED H. MEIBOHM,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-4795 Filed 2-13-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Office of the Special Counsel for Compliance

KERR-MCGEE CORP.

Proposed Consent Order

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it entered into a consent order with Kerr-McGee Corporation on February 7, 1979. The consent order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period August 1973 through December 1978. To remedy any overcharges that may have occurred during the period, Kerr-McGee agrees to refund $46 million to its customers through payments, credit, memoranda and the rollback of retail prices.

As required by the regulations cited above, OSC will receive comments on the consent order for a period of March 16, 1979. Although the consent order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the consent order, attempt to obtain a modification of the consent order or issue the consent order as proposed.

COMMENTS: Comments must be received on or before March 16, 1979 to be considered. Address comments to:

Kerr-McGee Consent Order Comments, Office of Special Counsel, Department of Energy, 12th and Pennsylvania Avenue, NW., Rm. 3134, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Carl Corrallo, Solicitor to the Special Counsel for Compliance, Department of Energy, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-633-8288.

Copies of the consent order may be received free of charge by written request to:

Consent Order Request, Office of Special Counsel, Department of Energy, 12th and Pennsylvania Avenue, NW., Rm. 3134, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room GB145.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Kerr-McGee Corporation is one of the 34 major refiners audited by the Special Counsel to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Kerr-McGee engages in the production, refining and marketing of crude oil and refined petroleum products. DOE and its predecessors have been conducting an audit of Kerr-McGee since February 1974. Responsibility for that audit was assumed by the Special Counsel in October of 1977. The audit included a review of Kerr-McGee's records relating to compliance with the Regulations during the period August 19, 1973 through December 31, 1978 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. This consent order resolves all issues not previously resoved, concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

THE CONSENT ORDER

OSC and Kerr-McGee have discussed the issues addressed by this consent order and each believes that its position on these issues would be sustained if tried by a court. However, the parties desire to resolve these issues without resort to lengthy and disputed compliance actions by OSC. Such enforcement actions would be complex, time consuming and expensive to both parties. Additionally, the operation of the Regulations makes difficult the determination of amounts by which individual purchasers may have been overcharged. OSC believes that the consent order represents a fair disposition of the total dispute with Kerr-McGee and provides an appropriate means of making restitution for any possible overcharges. Kerr-McGee, without admitting a violation or overcharge, is willing to compromise its disputes with OSC. OSC thus believes that the terms and conditions of this consent order provide a reasonable resolution and conclusion of the audit of Kerr-McGee and that the consent order is in the best interests of the United States.

The consent order provides that Kerr-McGee will make available to its purchasers $46 million, of which, in approximate figures, $31.5 million is allocated to purchasers of motor gasoline, $8 million is allocated to purchasers of fuel and heating oil, $5.1 million is allocated to the purchasers of general refinery products and $1.4 million is allocated to the Department of Defense for purchases of aviation jet fuel.

DISTRIBUTION OF THE REFUND

A portion of the refund allocated to motor gasoline purchasers represents sales at Kerr-McGee proprietary stations. The amount, approximately $691,000, will be distributed through a reduction in the price of motor gasoline at Kerr-McGee outlets which will remains in effect until the entire amount has been accounted for. The price reduction is to be implemented within 15 days of notice to Kerr-McGee that the consent order is effective. By regulation, the consent order cannot be made final until comments received during the 30 day comment period have been considered and notice of action taken is pusblished in the FEDERAL REGISTER.

The refund allocated to nonretail and large volume retail customers will be distributed pursuant to agreements, called "Participation Agreements." Under the terms of the consent order, Kerr-McGee will send agreements to those customers identified as having paid prices in excess of the weighted average price for that product. The object of the agreements is to ensure that distributors of Kerr-McGee's products, termed "resellers" under the Regulations, receive an appropriate portion of the amount allocated to their purchases during the audit period and that in virtually all instances, no less than 55 percent of that amount is passed through to the retail customer. Where Kerr-McGee sells products to a reseller who in turn sells to another distributor, the first reseller must submit a "Secondary Participation Agreement" to his customer. If the customer is also a reseller, the secondary participant must submit an agreement to his customer until the chain of distribution is ended at the retail level, where a price reduction will take place.

Large volume purchasers from Kerr-McGee who consume the refined product rather than redistribute it are entitled to retain the entire amount of the refund, unless the large volume consumer is a refiner.

Participation in this refund program is voluntary. Participation Agreements will be sent to Kerr-McGee purchasers within 15 days of the effective date of the consent order. The Participation Agreement will indicate the amount of refund and to what products and time periods it has been allocated. To take part in the program, the Participation Agreement must be signed and returned within 45 days of receipt. Execution of the agreement will constitute a release of Kerr-McGee from further liability to the party signing the agreement for claims arising under the Regulations in the audit period. After executing the agreement, the primary participant must submit Secondary Participation Agreements to its wholesale customers, and the Secondary Participant must submit Tertiary Participation Agreements to its wholesale customers, if any. Terms of the Secondary and Tertiary Participation Agreements are similar to the terms of the primary agreement.

The primary participant will receive its refund after it reports certain details concerning the secondary participants to Kerr-McGee. That refund will be reduced by amounts allocated to secondary participants who choose not to participate. Although the primary participant's refund may be reduced in this manner, it will still retain 30 percent of the unreduced amount of its original agreement. Secondary participants will be entitled to retain 21.5 percent of the amount allocated to them, while tertiary participants retain 15 percent. In all cases, large volume consumers are treated similarly.

All participants will be subject to the possibility of audit by DOE to assure compliance with the participation agreements, and all agreements are subject to DOE's right to seek judicial enforcement in the event of breach.

In the event that some primary or secondary participants choose not to enter into the agreements, the amounts they would have received will be retained in a fund which will bear interest at the same average rate as 90 day Treasury bills. The fund will be used to satisfy judgments against Kerr-McGee, or settlements approved by OSC for alleged violations of the Regulations during the audit period. Following the third anniversary of the effective date of the consent order, the fund, except for an amount agreed to be sufficient to offset possible judgments in pending cases, will be distributed through price reductions in Kerr-McGee's retail gasoline sales. The amount of the balance remaining after outstanding suits are conluded will be paid into the U.S. Treasury.

The provisions of 10 CFR § 205.199J, including the publication of this notice and a press release, are applicable to the consent order. Under the terms of that section, and by agreement, Kerr-McGee and OSC agree that the consent order constitutes neither an admission by Kerr-McGee, nor a finding by OSC, that Kerr-McGee has violated the Regulations during the audit period. Kerr-McGee further waives its right to appeal or seek judicial review which would otherwise attach to an order issued by OSC.

SUBMISSION OF WRITTEN COMMENTS

Interested persons are invited to submit written comments concerning this consent order to the address noted above. All comments received by 4:30 p.m. on the thirtieth calendar day following publication of this notice, or the first federal work day following, if the thirtieth day falls on a weekend or holiday, will be considered by OSC before determining whether to finalize the consent order. Modifications of the consent order which, in the opinion of OSC, significantly change the terms or impact of the consent order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., February 8, 1979.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 79-4822 Filed 2-13-79; 8:45 am]

[6450-01-M]

OFFICE OF ENERGY RESEARCH STUDY GROUP OF THE ENERGY RESEARCH ADVISORY BOARD

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Energy Research Advisory Board Study Group will meet at the times and places indicated below:

Thursday, March 1, 1979—2:00 p.m. to 4:00 p.m. Lawrence Livermore Laboratory, Poseidon Room, Building 111 (entrance at West Gate off East Ave.), Livermore, California.

Friday, March 2, 1979—3:00 p.m. to 5:00 p.m. Berkeley School District Administration Building, Board of Education Room, 1414 Walnut Street, Berkeley, California.

The parent Board was established to advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

The Study Group will examine the relationships between the University of California and the Los Alamos Scientific and Lawrence Livermore Laboratories and will report its findings and recommendations to the parent Board.

The tentative agenda is as follows:

Discussion concerning the University of California's relationship with the Lawrence Livermore Laboratory and the Los Alamos Scientific Laboratory.

The meeting is open to the public. The Chairman of the Study Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Study Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202/252-5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on February 9, 1979.

GEORGIA HILDRETH,
Director,
Advisory Committee Management.

[FR Doc. 79-4853 Filed 2-13-79; 8:45 a.m.]

[6450-01-M]

Office of Hearings and Appeals

APPLICATION FOR EXCEPTION FILED BY AMOCO OIL CO.

Public Hearing

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Public Hearing.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) gives notice of a public hearing to be held in Washington, D. C. to receive comments with respect to an Application for Exception filed by Amoco Oil Company (Amoco) on February 7, 1979, Case No. DEE-2152. In its submissions, Amoco requests relief from the provisions of 10 CFR 211.10 which requires that allocations of motor gasoline be determined by references to volumes supplied during 1972, as adjusted. The purpose of this hearing is to provide interested persons an opportunity to make oral presentations regarding the basis for Amoco's request that exception relief be granted to Amoco which permits the firm to determine allocation levels on the basis of 1978 supply levels.

DATES: Hearing: February 22, 1979. Request to Speak: February 20, 1979.

ADDRESSES: Request to Speak: Debra Kidwell, Office of Public Hearing Management, Box WT, 2000 M Street, NW., Room 2313, Washington, D.C. 20461, 202-254-5201.

Hearing Location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

Time: 9:30 a.m.

Comments and Further Information to: Thomas O. Mann, Associate Director, Office of Hearings and Appeals, 2000 M Street, NW., Room 8014, Washington, D.C. 20461, (202) 254-8606.

SUPPLEMENTARY INFORMATION: Currently pending before the Office of Hearings and Appeals is an Application for Exception filed by Amoco Oil Company (Amoco) on February 7, 1979. In its Application for Exception, Amoco states that the firm's current supply of gasoline is insufficient to meet the needs of its customers. Amoco states that due to an unusually high number of refinery breakdowns which occurred in recent months the firm's production of gasoline has been severely curtailed. Amoco further states that during the same period, increased demand resulting from uncertainties about the crisis in Iran has prevented Amoco from purchasing sufficient quantities of gasoline on the open market to compensate for the supply shortfalls caused by the firm's curtailment in production.

Amoco claims that it will be unable to fully meet its customers' current gasoline requirements during the months of March, April and May 1979. Amoco contends that in order to equitably distribute its available supplies of gasoline until that time, an exception should be granted which permits it to use an allocation method which more closely reflects current demand than the 1972 base period specified in Section 211.102 of the DOE allocation regulations.

Since granting exception relief will affect the customers of Amoco and may have a precedential effect on other purchasers and suppliers, the DOE has determined that it would prove beneficial to convene a public hearing at which all interested parties will have an opportunity to make oral presentations regarding the merits of the underlying Amoco exception application.

Any party that wishes to make an oral presentation at the hearing should contact the individual whose name appears at the beginning of this notice by February 20, 1979. The Office of Hearings and Appeals reserves the right to limit the number of persons to be heard and to establish the procedures governing the conduct of the hearing. Those individuals selected to make oral presentations will be notified by February 21, 1979. The

Director of the Office of Hearings and Appeals or his designee will preside at this hearing. Please submit 100 copies of the Proposed Statement by 4:30 p.m. on February 21, 1979.

At the hearing, representatives from Amoco will be afforded an opportunity to make an initial statement. Following those statements, interested parties, including customers affected by the exception application, will be permitted to make statements subject to reasonable time constraints. If any person wishes to ask a question of any person who has made an oral presentation at the hearing, he or she may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for an answer.

At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and may be purchased from the reporter. The entire record of the hearing will be retained by DOE and will be made available for inspection at the Office of Hearings and Appeals Public Docket Room, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., Monday through Friday. Issued in Washington, D.C., February 12, 1979.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

[FR Doc. 79-4954 Filed 2-12-79; 2:36 pm]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1060-4; OPP—180264]

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Crisis Exemption to Use Permethrin to Control Heliothis Species

The Environmental Protection Agency (EPA) gives notice that the California Department of Food and Agriculture (hereafter referred to as "California") has availed itself of a crisis exemption to use permethrin to control *Heliothis* species on a maximum of 42,000 acres of winter lettuce in two California counties. The exemption is subject to the provisions of 40 CFR Part 166, which prescribes requirements of Federal and State agencies for use of pesticides under emergency conditions. As required, California has submitted in writing the following information.

According to California, approximately 42,000 acres of winter lettuce are grown in Riverside and Imperial counties with an estimated value of $63,500,000; all of this acreage is infested with budworm, a serious pest of lettuce. Without some type of effective controls, *Heliothis* species can be expected to cause total loss of some fields, California stated. Currently registered materials, including methomyl, parathion, and acephate, have not provided adequate control of this pest, even at maximum application rates and frequencies.

California used Ambush and Pounce which contain the active ingredient (a.i.) permethrin at a rate of 0.2 pound in not less than 20 gallons of water per acre when applied by ground or not less than 5 gallons of water when applied by aircraft. Applications were made at 5- to 7-day intervals with a 7-day pre-harvest interval. Application was made by State-certified applicators in accordance with California closed mixing system regulations. Workers were not permitted reentry into fields until the spray dried. Since treatment was expected to exceed 30 days, California has submitted a request for a specific exemption for continuation of this use of permethrin.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: February 3, 1979.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4877 Filed 2-13-79; 8:45 am]

[6560-01-M]

[FRL 1061-2; Opp-50402]

EXPERIMENTAL USE PERMITS

Issuance

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 1471-EUP-59. Elanco Products Co., Indianapolis, Indiana 46206. This experimental use permit allows the use of the remaining supply of approximately 112.5 pounds of the herbicide oryzalin on transplant burley and dark tobacco to evaluate control of annual grasses and broadleaf weeds; this use was authorized in a previous experimental use permit. A total of 150 acres is involved; the program is authorized only in the States of Kentucky, Maryland, Ohio, and Wisconsin. The experimental use permit its effective from January 19, 1979 to April 5, 1980. (PM-25, Room: E-301, Telephone: 202/755-2196)

No. 2724-EUP-15. Zoecon Industries, Dallas, Texas 75234. This experimental use permit allows the use of 20 pounds of the insecticide N-(mercaptomethyl) phthalimide S-(0,0-dimethyl phosphorodithioate) on 1,250 hogs to evalute control of hog mange and hog lice. The program is authorized only in the States of Arkansas, Illinois, Indiana, Iowa, Nebraska, and Virginia. The experimental use permit is effective from January 22, 1979 to January 22, 1980. A permanent tolerance for residues of the active ingredient in or on the fat, meat, and meat by-products of hogs has been established (40 CFR 180.261). (PM-25, Room: E-229, Telephone: 202/426-9425)

No. 10182-EUP-9. ICI Americas, Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 12,000 pounds of the insecticide permethrin on celery to evaluate control of the vegetable leaf miner, cutworm, and looper. A total of 6,000 acres is involved; the program is authorized only in the State of Florida. The experimental use permit is effective from January 25, 1979 to January 25, 1980. A temporary tolerance for residues of the active ingredient in or on celery has been established. (PM-17, Room: E-229, Telephone: 202/426-9425)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: February 7, 1979.

HERBERT S. HARRISON,
Acting Director, Registration Division.

[6560-01-M]

[FRL 1060-3; OPP-180265]

GUAM DEPARTMENT OF ENVIRONMENTAL PROTECTION

Issuance of a Specific Exemption To Use Picloram to Eradicate Bunchy-Top Infected Banana Plants

The Environmental Protection Agency (EPA) has granted a specific exemption to the Guam Department of Environmental Protection (hereafter referred to as the "Applicant") to use picloram to eradicate banana plants infected with a viral disease known as "Bunchy-Top." This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the applicant, fifty percent of the banana plants in Guam are infected with Bunchy-Top disease. This disease is vectored by an aphid and elimination of the infected host is the only means of preventing further spread of the causative virus to healthy plants. Diseased plants grow only one to two feet high and normally do not bear fruit.

There are not registered pesticides to eradicate banana plants, the only means of preventing further spread. According to the Applicant, mechanical removal of infected plants may not remove the entire root system and both hand and mechanical removal is cost prohibitive since the plants occur not only in cultivated fields but also in dense jungles and hilly terrain. The use of 2,4-D has been suggested, but the Applicant stated that 2,4-D has not been tested on banana plants and, therefore, its effectiveness is not known. Further, 2,4-D would have to be mixed and bulky injection equipment would have to be transported. This procedure would not be practical on Guam's terrain, the Applicant claimed. According to the Applicant, the disease threatens to end banana production on Guam, an important element in the island's economy.

The Applicant proposed to use K-Pin, a Japanese product not registered with EPA. K-Pin is a tooth pick impregnated with picloram. The Applicant claimed that four to six K-Pins inserted into the base of an infected banana plant will kill it. The Applicant also stated that because of the compactness of the product, personnel could treat and do necessary follow-up easily and quickly.

Since the proposed use is essentially a non-food use (infected plants do not normally produce fruit, as mentioned above), EPA has determined that this use of picloram presents little or no hazard to man. Any fruit that may have developed will be removed before treatment. EPA has also concluded that the proposed use pattern should present no environmental problem.

After reviewing the application and other information, EPA has determined that (a) a pest outbreak of Bunchy-Top disease has occurred; (b) there is no pesticide presently registered and available for use to eradicate Bunchy-Top infected banana plants in Guam; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the infected banana plants are not eradicated; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until January 2, 1980. The specific exemption is also subject to the following conditions:

1. Picloram applications are limited to banana plants infected with the viral disease known an "Bunchy-Top";
2. The dosage rate may not exceed six K-Pins per banana plant;
3. The total number of K-Pins authorized is 30,000;
4. Plants bearing bananas must be harvested prior to treatment or the fruit must be destroyed;
5. Application must be carried out by trained Department of Agriculture personnel who will be under the supervision of applicators certified by the Territory of Guam;
6. The following message, in English, must be stamped on a blank 1½ by 6 inch space inside the cover on the face of the cardboard pin holder:

K-Pin
Warning—Keep out of reach of children
Herbicide treated pins for use only in the eradication of bunchy top diseased banana plants.
Directions for use—Insert pin into base of stem on plant to be eradicated to depth of colored ring on pin.
Pin contains picloram; 50 pins per box.
Not for internal use.

7. All K-Pins will be signed out daily, recording the user, date, and amount;
8. A standardized daily field protocol will be required of each user indicating where and when the material is applied;
9. All K-Pins not used at the end of the day will be returned and signed into the supervisor with the field protocol;
10. The field protocols and supply records will be reviewed by the program leaders to confirm proper use;
11. During the extended follow-up period, the sign-outs of K-Pins and the field protocols will be on a weekly basis instead of daily;
12. Measures should be taken to place K-Pins in areas not readily accessible to view;
13. The Applicant is responsible for assuring that the restrictions pursuant to this specific exemption are met and must submit a report summarizing the results of this program by January, 1981; and
14. The EPA shall be immediately informed of any adverse effects resulting from the use of picloram in connection with this exemption.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: February 2, 1979.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4881 Filed 2-13-79; 8:45 am]

[6560-01-M]

[FRL 1060-5; OPP-180263]

HAWAII DEPARTMENT OF AGRICULTURE

Issuance of a Specific Exemption To Use Benomyl as a Post-Harvest Treatment on Papayas

The Environmental Protection Agency (EPA) granted a specific exemption to the Hawaii Department of Agriculture (hereafter referred to as the "Applicant") to use benomyl as a post-harvest treatment on a maximum of 25 million pounds of papayas intended for export from Hawaii. This exemption was granted in accordance with, and was subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, post-harvest diseases of papaya are currently the largest single factor contributing to market losses of fresh papayas. Anthracnose and stem-end rot, two fungal diseases, are the most serious. The diseases are not visible on unripened fruits as they are packed, making it impossible for the packer to cull potentially diseased fruits. Later, as fruits ripen after shipping, fungal lesions develop rapidly and fruits may decay within 24 hours. Disease may be reduced but not entirely eliminated by a careful orchard management program.

There are no fungicides registered for post-harvest treatment of papayas; however, there are other means of reducing losses due to post-harvest decay. EBDC and chlorothalonil are registered for use on papayas during the growing season, but, according to the Applicant, give only partial control and require a supplemental post-harvest treatment. The only other treatment available is a hot water dip but only 21% control of post-harvest disease is achieved with this method alone. The use of benomly after a hot water dip has yielded 75% control of post-harvest disease, the Applicant claimed.

The Applicant stated that in 1977 over 75% of Hawaii's papaya crop was exported. The Applicant explained the need to ship papayas by surface vessels, rather than air for two reasons: (1) over $2 million could be saved by using surface transportation, and (2) there is not adequate air freight space during the peak production months. The Applicant claimed that there is, therefore, a need to have an effective and economical post-harvest treatment to protect the fruit during the longer surface trips.

The Applicant proposed to treat up to 25 million pounds of papayas intended for export with Benlate (EPA Reg. 352-354) which contains the active ingredient (a.i.) benomyl at a dosage rate of 0.5-1.0 pound a.i. per 100 gallons of water. An adjuvant such as Bio-film or pineapple wax might be incorporated to promote even distribution of benomyl.

EPA has determined that a residue level of 2 parts per million (ppm) of benomyl on papayas is adequate to protect the public health and this program should not have exceeded that level. The segment of the public most likely to be exposed to benomyl under this program was the workers in the papaya processing warehouses; EPA imposed protective conditions for them. EPA imposed a further condition to prevent processing plant runoff water containing benomyl from adversely affecting aquatic organisms.

EPA further required the Applicant to inititate tests of alternative fungicides such as thiabendazole, for use as a post-harvest dip on papayas. This provision was to insure that other fungicides could be made available if additional toxicological data on benomyl indicate that the risk of applying that fungicide outweighs the benefits.

It should be noted that a rebuttable presumption against registration of pesticide products containing benomyl was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61788); however, no decision has yet been made by EPA as to appropriate regulatory action in this matter.

After reviewing the application and other available information, EPA determined that (a) a pest outbreak of fungal diseases had occurred or was about to occur; (b) there was no pesticide registered and available for post-harvest treatment of papayas in Hawaii; (c) there were no alternative means of control, taking into account the efficacy and hazard; (d) signficant economic problems might have resulted if the fungal diseases were not controlled; and (e) the time available for action to mitigate the problems posed was insufficient for a pesticide to be registered for this use. Accordingly, the Applicant was granted a specific exemption to use the pesticide noted above until December 31, 1978, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The DuPont product Benlate (EPA Reg. No. 352-354) which contains the active ingredient benomyl was authorized at a dosage rate of one to two pounds of product (0.5 to 1.0 pound a.i.) in 100 gallons of water;
2. Benomyl might be applied as a dip or spray and might be used alone or with an adjuvant such as Bio-film or 1:4 dilution of pineapple wax;
3. All personnel involved in the mixing, loading, and application of Benomyl to treat papayas were to wear full length trousers, shirt, gloves, goggles, and a respirator;
4. All clothing worn during the preparation and application of benomyl was to be removed and cleaned after each day of use;
5. All employees were to wash immediately upon dermal contact with benomyl in the spray suspension;
6. Only papayas intended for interstate shipment were to be treated. Up to 25 million pounds of papayas were to be treated;
7. The amount of benomyl employed on a daily basis was to be planned carefully so that contamination through waste disposal was kept at a minimum;
8. The use of benomyl to treat papayas was authorized only in processing plants where run-off water was recirculated;
9. The Applicant was to initiate testing of alternative methods of control of post-harvest fungi on papayas. Fungicides such as thiabendazole were to be evaluated for this purpose;
10. All label precautions, directions and restrictions were to be adhered to;
11. The Applicant was to initiate residue studies to resolve the issue of wax incorporation and the differences in residues of benomyl likely to occur through the use of wax in combination with benomyl;
12. A 2.0 ppm combined residue level of benomyl and its metabolites containing the benzimidazole moiety in or on papayas has been deemed adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, was advised of this action;
13. A full report on the results of this program must be submitted to the EPA by June 30, 1979; and
14. The EPA was to be informed immediately of any adverse effects resulting from the use of benomyl in connection with this specific exemption.

Inadvertently, information concerning this specific exemption was not published before its expiration. Since the granting of this specific exemption, the Applicant requested a six-month extension of the exemption because testing of thiabendazole with respect to residue studies has not been completed, and the use of benomyl is needed to minimize further losses due to post-harvest decay. EPA has granted that extension so that the specific exemption now expires on June 30, 1979. All other restrictions of the original exemption remain in force.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 US.C. 136).

Dated: February 3, 1979.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4878 Filed 2-13-79; 8:45 am]

[6560-01-M]

[FRL 1061-1; PF-121]

PESTICIDE PROGRAMS

Filing of Pesticide/Food Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following have been submitted to the Agency for consideration.

PF 9F2162. Monsanto Agricultural Products Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166. Proposes that 40 CFR 180.364 be amended by establishing a tolerance for the combined residues of the herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethylphosphonic acid on the raw agricultural commodity stone fruit with a tolerance limitation of 0.2 part per million (ppm). The proposed analytical method for determining residues is by gas liquid chromatography using a phosphorus-specific flame photometric detector. PM25. (202/755-2196)

FAP 9H5204. Monsanto Agricultural Products Co. proposes that 21 CFR 193.235 be amended by establishing a regulation permitting residues of herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethylphosphonic acid on the commodity potable water with a tolerance limitation of 0.1 ppm. PM25 (202/755-2196)

Interested persons are invited to submit written comments on this petition to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington, DC 20460. Inquiries concerning this petition may be directed to designated Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the

numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: February 7, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-4882 Filed 2-13-79 8:45 am]

[6560-01-M]

[FRL 1060-1; OPP 30155B]

PESTICIDE PROGRAMS

Approval of Application to Register Pesticide Product Containing New Active Ingredient

On December 20, 1978, notice was given (43 FR 59432) that Rhodia Inc., Agricultural Div., Monmouth Junction, NJ 08852, had filed an application (EPA File Symbol No. 359-AIL) with the Environmental Protection Agency (EPA) to register the pesticide product CHIPCO 26019 FUNGICIDE containing 50% of the active ingredient 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide which was not previously registered at the time of submission. As stated in the December 20, 1978 notice, the pesticide is primarily used as a turf fungicide.

This application was approved January 23, 1979, and the product has been assigned the EPA Registration No. 359-685. CHIPCO 26019 FUNGICIDE is classified for general use. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW, Washington, DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with Section 3(c)(2) of FIFRA, within 30 days after the registration date of January 23, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW, Washington, DC 20460. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: February 1, 1979.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4879 Filed 2-13-79; 8:45 am]

[6560-01-M]

[FRL 1060-2; OPP-30155A]

PESTICIDE PROGRAMS

Approval of Application To Register Pesticide Product Containing New Active Ingredient

On December 20, 1978, notice was given (43 FR 59432) that Rhodia Inc., Agricultural Div., Monmouth Junction, NJ 08852, had filed an application (EPA File Symbol No. 359-AIU) with the Environmental Protection Agency (EPA) to register the pesticide product RHODIA IPRODIONE TECHNICAL containing 95% of the active ingredient 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide which was not previously registered at the time of submission.

This application was approved on January 23, 1979 for use as a technical chemical for formulating fungicides. The product has been assigned EPA Registration No. 359-684. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW, Washington DC 20460. The data and other scientific information used to support registration; except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with Section 3(c)(2) of FIFRA, within 30 days after the registration date of January 23, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW, Washington, DC 20460. Such requests should: (1) identify the product by name and registration number and (2) specify the data or information desired.

Dated: February 1, 1979.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4880 Filed 2-13-79; 8:45 am]

[6560-01-M]

[FRL 1059-2; OPP-00088]

PESTICIDES/INTERIM ADMINISTRATIVE REVIEWS

Proposed Definitions of "Validated Test" and "Other Significant Evidence"

AGENCY: Environmental Protection Agency (EPA or Agency), Office of Pesticide Programs.

ACTION: Proposed definition of the terms "validated test" and "other significant evidence" as they apply to initiation of an interim administrative review (rebuttable presumption against registration (RPAR)).

SUMMARY: On September 30, 1978, the President signed the Federal Pesticide Act of 1978 (FPA), (Public Law 95-396, 92 Stat. 819) amending the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. Section 6 of the FPA adds a new section 3(c)(8) to FIFRA which provides that the Administrator of EPA may not initiate an interim administrative review of a pesticide unless the review is based on "a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment." Section 3(c)(8) further directs the Administrator to publish in the FEDERAL REGISTER definitions of the terms "validated test" and "other significant evidence." This notice satisfies the direction to publish definitions of the terms "validated test" and "other significant evidence." Comments by the public on the definitions are invited.

DATES: Comments on this notice should be submitted on or before March 16, 1979.

ADDRESS: Address all comments to Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. Comments received will be available for public inspection in Room E-401, Waterside Mall East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Dr. William A. Wells (see mailing address above), telephone (202) 755-5687.

SUPPLEMENTARY INFORMATION: Section 6 of the FPA added a new section 3(c)(8) to FIFRA, which provides as follows:

Notwithstanding any other provision of this Act, the Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or of any of its uses prior to initiating a formal action to cancel, suspend, or deny registration of such

pesticide,. required under this Act, unless such interim administrative process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment. Notice of the definition of the terms "validated test" and "other significant evidence" as used herein shall be published by the Administrator in the FEDERAL REGISTER.

The Agency adopts as its definitions of these terms the definition given to them in the Conference Report on the FPA [No. 95-1188]:

The Administrator shall ensure that pesticides shall be subject to the RPAR process only on the basis of a validated test or other significant evidence (and not on the basis of unsubstantiated claims), and that the term "validated test" be defined as a test conducted and evaluated in a manner consistent with accepted scientific procedures, and that the term "other significant evidence" be defined as evidence that relates to the uses of a pesticide and their adverse risk to man or to the enviroment. It is the intent of the conferees that "other significant evidence" of adverse risk means factually significant information and is not to include evidence based only on misuse of the pesticide.

Interested persons are reminded that the Agency announced its intention to modify its regulations governing the RPAR process (40 CFR Part 162) and its regulations governing hearings under FIFRA section 6 in an Advance Notice of Proposed Rulemaking that was published in the FEDERAL REGISTER on November 28, 1977 (42 FR 60573). This notice solicited comments from all interested persons. Any additional comments on the terms defined above or other subjects relevant to modifications to 40 CFR Part 162 or 40 CFR Part 164 are welcome.

Dated: February 5, 1979.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4647 Filed 2-13-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY COMMITTEE ON UHF-TV RECEIVER NOISE FIGURE MEASUREMENT STANDARDS

Notice of Establishment

The Federal Communications Commission has determined that establishment of an Advisory Committee on UHF-TV Receiver Noise Figure Measurement Standards is necessary and in the public interest. The committee is being established for the purpose of studying and making recommendations on the proper techniques for measuring television receiver noise figures. (The noise figure is a technical measure of one of the factors which influences the amount of "snow," a kind of visual interference seen by viewers on their television receivers.) The Commission's rules require all new television models certified after October 1, 1979 to have a UHF noise figure of 14 decibels or less. The Commission seeks to ensure that the techniques which will be used to measure the noise figure are accurate, reliable, and repeatable. Advice from the committee now being established will be used in the development of appropriate measurement techniques.

The committee will have two informal subcommittees, one to study development of the measurement procedure and one to study the optimum accuracy and tolerance of the measurement procedure. The committee is being chartered for a period of approximately eight months and will terminate on October 15, 1979. The designated Federal employee for this committee is Lawrence Middlekamp, FCC Laboratory Division, Office of Chief Engineer. Individuals desiring additional information concerning this committee may contact Mr. Middlekamp at (301) 725-1585.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-4768 Filed 2-13-79; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

OPEN MEETINGS

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, March 1, 1979
Thursday, March 8, 1979
Thursday, March 15, 1979

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management respresentatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, D.C. 20415 (202-632-9710).

JEROME H. ROSS,
Chairman, Federal Prevailing Rate Advisory Committee.

FEBRUARY 9, 1979.

[FR Doc. 79-4847 Filed 2-13-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the

Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than March 9, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

1. CHEMICAL NEW YORK CORPORATON, New York, New York (consumer finance and insurance activities; North Carolina): to engage, through its subsidiary, Sunamerica Financial Corporation, in making direct loans and purchasing installment sales finance contracts such as would be made or acquired by consumer finance companies, including making loans secured by real and personal property; and acting as agent or broker for the sale of life, accident and disability, and property and casualty insurance directly related to its extensions of credit. These activities would be conducted from an office in Wilmington, North Carolina, and the geographic area to be served is the Wilmington, North Carolina metropolitan area. This application is for the relocation of an existing office within the same city.

2. MANUFACTURERS HANOVER CORPORATION, New York, New York (consumer finance and insurance activities; New Jersey): to engage through Applicant's subsidiaries, Ritter Financial Corporation and The Financial Source, Inc., of New Jersey, in arranging, making, or acquiring loans and other extensions of credit secured by second mortgages on residential real property such as would be made by a consumer finance company; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of credit life insurance directly related to such loans or extensions of credit by Applicant's subsidiaries. These proposed services would be provided from offices in Flemington and Riverside, New Jersey, and the geographic areas to be served are the counties in which the offices are located and certain adjacent counties in New Jersey. Notice of this application was previously published in newspapers of general circulation in the communities to be served, and comments must be received by February 27, 1979.

B. *Federal Reserve Bank of Richmond*, 701 East Byrd Street, Richmond, Virginia 23261:

THE CITIZENS AND SOUTHERN CORPORATION, Charleston, South Carolina (financing and insurance activities; North Carolina, South Carolina): to engage, through its subsidiary, Carolina National Mortgage Investment Company, Inc., in servicing loans and other extensions of credit and making or acquiring loans and other extensions of credit such as would be made by a mortgage or finance company; and offering life insurance directly related to its extensions of credit. These activities would be conducted from an office in Charlotte, North Carolina, and the geographic areas to be served encompass Cabarrus, Catawba, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties, North Carolina, and Lancaster and York Counties, South Carolina.

C. *Federal Reserve Bank of Chicago*, 230 South LaSalle Street, Chicago, Illinois 60690:

WALTER E. HELLER INTERNATIONAL CORPORATION, Chicago, Illinois (commercial finance activities; Iowa, Kansas, Missouri, Nebraska, Oklahoma): to engage, through its subsidiary, Walter E. Heller & Company, in the business of commercial finance. These activities would be conducted from an office in Kansas City, Missouri, and the geographic areas to be served are Iowa, Kansas, Missouri, Nebraska, and Oklahoma.

D. *Federal Reserve Bank of San Francisco*, 400 Sansome Street, San Francisco, California 94120:

ZIONS UTAH BANCORPORATION, Salt Lake City, Utah (mortgage and insurance activites; Utah): to engage, through its subsidiary, Zions Mortgage Company, in the origination, acquisition, and servicing of mortgage loans, including development and construction loans on multifamily and commercial properties; and acting as agent or broker for the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from an office in Midvale, Utah, and the geographic area to be served is the south part of Salt Lake County, Utah.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, February 7, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-4827 Filed 2-13-79; 8:45 am]

[6210-01-M]

FIRST DOVER INVESTMENT COMPANY, INC.

Acquisition of Bank

First Dover Investment Company, Inc., Elgin, Minnesota, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 35.2 percent or more of the voting shares of First State Bank of Dover, Dover, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than March 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 6, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-4826 Filed 2-13-79; 8:45 am]

[4110-84-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration

PROJECT GRANTS FOR GENETIC DISEASES TESTING AND COUSELING SERVICES, AND PROJECT GRANTS FOR SICKLE CELL DISEASE SCREENING AND EDUCATION CLINICS

Announcement of Availability of Grants

The Health Services Administration (HSA) announces that applications are being accepted for (1) voluntary comprehensive genetic diseases testing and counseling services project grants under the authority of Section 1101(a) of the Public Health Service (PHS)

Act (42 U.S.C. 300b *et seq.*) and (2) sickle cell screening and education services project grants under the authority of Section 301 (42 U.S.C. 241) of the PHS Act.

Comprehensive Genetic Diseases Testing and Counseling Services

Section 1101(a) authorizes the Secretary to make grants to public and nonprofit private entities for projects to plan, establish, and operate broad-range genetic diseases testing and counseling services. A continuing resolution for fiscal year 1979, Public Law 95-482, makes $4 million available for operation of this program.

The amount available in fiscal year 1979 for support of comprehensive genetic diseases testing and counseling projects is approximately $3,340,000. Of this amount, it is anticipated that approximately $3 million will be used to fund 19 noncompeting, continuation applications. Approximately $340,000 will be available to support new, competing applications, and the average amount of an award will be approximately $175,000. The Secretary will make grants to eligible applicants for projects which will in his judgment best promote the purposes of Section 1101(a) of the Act. Factors which will be considered by the Secretary include: (1) the number of persons proposed to be served, and the extent to which rapid and effective use of funds would be made; (2) the comprehensiveness of the proposed project; (3) the degree to which the project would be operated in conjunction with other existing health programs, including programs assisted under Title B of the Social Security Act (Maternal and Child Health and Crippled Children's Services); (4) the feasibility of the plan in the application for providing services, and the capability of the applicant to provide sound financial management; and (5) the extent to which the project would meet all other statutory and regulatory (when published) requirements. Grants will be made to applicants who propose to serve statewide areas unless the applicant demonstrates good cause to serve a smaller area.

Applications must be submitted to the appropritate Health Systems Agency(s) for review and comment, or review and approval, as appropriate, 60 days prior to the due date for completed applications to HSA. The deadline for receipt of completed applications for broad-range projects for genetic diseases testing and counseling services is 5:00 p.m., May 25, 1979. (See, "Application Information" below.)

Sickle Cell Screening and Education Services

Projects for sickle cell screening and education clinics are supported under the authority of Section 301 of the PHS Act, which authorizes the Secretary to make grants to, or enter into contracts with, public or nonprofit private entities for the development of these services. Under the continuing resolution, Public Law 95-482, $3.75 million is available for support of these projects in fiscal year 1979. Projects for sickle cell screening and education services supported under this authority are currently funded through contracts. However, beginning in fiscal year 1979, these services will be supported by grant awards rather than by contracts, and sickle cell project grants will be awarded on the same funding cycle as the broad-range genetic diseases project grants previously described. These changes will provide greater flexibility for the development of sickle cell screening and education services, and also will assist in the coordination of sickle cell projects with projects providing testing and counseling services for a broad range of genetic diseases.

Approximately $3.5 million is available, in fiscal year 1979, for sickle cell project grants. Funding priority will be given to approvable applications from sickle cell projects which have current contracts with HSA for the provision of sickle cell services. After this funding priority has been satisfied, and within the limits of available funds, new, competing applications for sickle cell project grants will be considered. Factors which will be considered by the Secretary include whether the proposed high-risk target population is located in a statewide area in which a broad-range genetic diseases testing and counseling services project has not been established, the extent of unmet need for sickle cell-related services in the proposed area, and whether the application is otherwise approvable. Applications must be submitted to the appropriate Health Systems Agency(s) for review and comment, or review and approval, as appropriate, 60 days prior to the due date for completed applications to HSA. The deadline for receipt of completed applications for sickle cell screening and education projects is 5:00 p.m., May 25, 1979. (See, "Application Information" below.)

Application Information

Application kits, including all necessary forms, instructions, and information may be obtained from, upon written request, and completed applications should be returned to, the Grants Management Branch, Bureau of Community Health Services, Room 6-49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301-443-1440.

Consultation and technical assistance regarding the development of an application are available from Audrey F. Manley, M.D., Bureau of Community Health Services, Office for Maternal and Child Health, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301-443-1080. Regulations which establish procedures and criteria for the approval of applications for genetic diseases testing and counseling services projects, and, also, for the approval of applications for projects for sickle cell screening and education clinics are forthcoming. All information and guidance provided are subject to modification based on the final regulations, and minor revisions in applications may be required.

Dated: February 8, 1979.

GEORGE I. LYTHCOTT, M.D.,
Administrator, Health Services Administration.

[FR Doc. 79-4767 Filed 2-13-79; 8:45 am]

[4110-24-M]

Institute of Museum Services

NATIONAL MUSEUM SERVICES BOARD

Meeting

The National Museum Services Board will hold an open meeting February 23-24 in San Antonio, Texas, to discuss future policy directions of the Institute of Museum Services' grants program and the status of regulations and to participate in a panel discussion with representatives from the Texas Association of Museums and the Mountain Plains Museum Association.

The Board will meet from 9 to 4:30 February 23, in the Auditorium of the Institute of Texan Cultures, University of Texas, 801 South Bowie Street and from 9 to 2:30 February 24, in the Koelhler Gallery of the Witte Memorial Museum, 3801 Broadway, San Antonio. The meeting will be open to the public.

For more information, contact Sam Eskenazi, 202/472-3325.

Dated: February 7, 1979.

CELIA PANAGOPOULOUS,
Acting Director.

[FR Doc. 79-4787 Filed 2-13-79; 8:45 am]

[4110-02-M]

Office of Education

ENVIRONMENTAL EDUCATION

Closing Date for Receipt of Applications for Fiscal Year 1979

Applications are invited for grants under the Environmental Education Program. Funds are available under Continuing Resolution, Pub. L. 95-482, and awards will be made in accordance with the requirements of the Environmental Education Act, as amended by Pub. L. 93-278, and with the regulations issued in 1974 (39 FR 17842), as amended in 1975 (40 FR 12990). (20 U.S.C. 1531-1536)

Grants are awarded in public and nonprofit private institutions, agencies, and organizations.

The purpose of these grants is to support research, demonstration, and pilot projects designed to improve public understanding of environmental issues as they relate to the quality of life. Projects develop educational practices and resources dealing with the relation of various aspects of the natural and manmade environment to the total human environment. These aspects include the relation of energy, population, pollution, resource allocation and depletion, conservation, transportation, technology, economic impact, and urban and rural planning to the total human environment.

Closing Date for Transmittal of Applications. Applications for awards must be mailed (postmarked) or hand delivered by April 16, 1979.

Applications Delivered by Mail. An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center Attention: 13.522, Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipt will not be accepted without a legible date stamped by the U.S. Postal Service. (Note: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information. In formulating proposals, potential applicants should be aware that approximately 50 projects will be funded in Fiscal Year 1979, including new and competing continuation projects. Grants averaging $50,000 for General Project activities and not exceeding $10,000 for Mini-grant activities will be awarded for a 12-month period. Mini-grants are available for community workshops, conferences, symposia, or seminars on a local environmental problem.

Available Funds. Approximately $3,500,000 will be available for the Environmental Education Program in FY 1979.

Application Forms. Application forms and program information packages are expected to be ready for mailing by January 29, 1979. They may be obtained by writing to the Office of Environmental Education, U.S. Office of Education, Room 2025, 400 Maryland Avenue, SW, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

State and Areawide Clearinghouse Review (OMB Circular A-95). Applications under the Environmental Education Program are subject to the clearinghouse procedures required by OMB Circular A-95, the regulations for facilitating coordinated planning under the Intergovernmental Cooperative Act. State/areawide clearinghouse procedures are applicable. Applicants should check with the appropriate Federal Regional Office to obtain the name(s) and address(es) of the Clearinghouse(s) if unknown. Indian Tribe applicants need not notify "clearinghouses" unless a Tribal, formalized procedure has been established through the Office of Management and Budget. All applicants, other than Indian tribes, must provide evidence of compliance with clearinghouse review requirements in the application to the Commissioner. Evidence of compliance may consist of:

(1) A State application identifier number obtained from the clearinghouse and comments from clearinghouses, if available.

(2) Certification by the applicant that he has provided either or both State and areawide clearinghouses with the opportunity to review the application and has received no comments.

Clearinghouse comments received by the applicant after the submission of the application to the U.S. Office of Education must be forwarded to the Office of Environmental Education, U.S. Office of Education. (See address under "For Information Contact.") Clearinghouse comments received by the Office of Environmental Education no later than May 29, 1979 will be considered in reviewing applications.

State Educational Agency Comment. The regulations for the Environmental Education Program, in accordance with the statute, require that a local educational agency provide a copy of its application to a State educational agency of the State within which the applicant is located, concurrently with its submission of the application to the Office of Education. For verification of the submission to the State educational agency, the local educational agency applicant must enclose, in its application to the Commissioner, a copy of the dated cover letter used to forward a copy of its application to the State educational agency. State educational agencies wishing to submit advice and comments on any educational agency application originating within their State may do so by forwarding advice and comments to the Office of Environmental Education, U.S. Office of Education. (See address under "For Further Information Contact.") Advice and comments received from SEAs no later than May 29, 1979 will be considered in reviewing applications.

Applicable Regulations. The regulations applicable to this program are:

(a) Office of Education General Provisions Regulations (45 CFR Parts 100 and 100a), and

(b) Regulations governing the Environmental Education Program (45 CFR Part 183) published in the FEDERAL REGISTER on May 21, 1974, (39 FR 17842) as amended March 24, 1975, (40 FR 12990).

Further Information. For further information contact, Mr. Walter Bogan, Director, Office of Environmental Education, Washington, D.C. 20202, Telephone (202) 245-9231.

(20 U.S.C. 3011-3018)

(Catalog of Federal Domestic Assistance Number 13.522, Environmental Education Program)

Dated: February 5, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 79-4825 Filed 2-13-79; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Public Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S. Code, Appendix I, Section 10(a)(2)). This document is intended to notify the general public of its opportunity to attend.

DATE: March 8, 9, 1979.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street NW Washington, D.C. The Capital Room.

The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is directed to:

(A) Advise the Commissioner concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

On March 8, 1979, the National Advisory Council on Vocational Education will meet in regular session from 9:00 a.m. to 5:00 p.m. in the Capital Room of the Hotel Washington, Washington, D.C. The following agenda will be included in the meeting:

MARCH 8

Call to Order 9:00 a.m., Determination of Quorum, Acceptance of January 11, 12 Minutes, Reports of the Chairperson and Executive Director.

Report from the Bureau of Occupational and Adult Education, U.S. Office of Education.

Council Committee Reports: MERC/Q (Trust Territories Visit), Special Populations (NACWEP Hearings), Technical Assistance, BOAE Evaluation Task Force Status.

Special Report on Nursing Programs.

Council Issue Paper No. 2—"Transition from School to Work".

MARCH 9.

Continuation of Other Council Business.

Adjournment—Noon.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Vocational Education, located at 425-13th Street N.W., Suite 412, Washington, D.C. 20004. For further information call Virginia Solt: (202) 376-8873.

Signed at Washington, D.C., on February 8, 1979.

RAYMOND C. PARROTT,
Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 79-4848 Filed 2-13-79; 8:45 am]

[4110-02-M]

STATE POSTSECONDARY EDUCATION COMMISSIONS

Closing Date for Receipt of Information Concerning Establishment of State Postsecondary Education Commissions

In order for a State to receive funds appropriated during fiscal year 1979 to support statewide comprehensive planning for postsecondary education as authorized under Section 1203(a) of the Higher Education Act of 1965 (20 U.S.C. 1142b(a)), it must have established a State Postsecondary Education Commission which, as required by Section 1202(a) of the Act, is broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of postsecondary education in the State, including community colleges, junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, four year institutions of higher education and branches thereof. States which have not previously submitted information concerning establishment of a State Commission and which wish to receive planning funds must submit the following information to the U.S. Commissioner of Education by March 9, 1979:

(1) An indication of which of the following three options for establishing a Section 1202 State Commission the State has chosen to follow: (i) Creation of a new Commission, (ii) designation of an existing State agency or State Commission, or (iii) expanding, augmenting or reconstituting the membership of an existing State agency or State Commission.

(2) An indication whether any of the following State-administered program authorities contained in the Higher Education Act of 1965 have been assigned to the Section 1202 State Commission:

(i) Community Services and Continuing Education (HEA Section 105);

(ii) Equipment for Undergraduate Instruction (HEA Section 603); and

(iii) Grants for Construction of Undergraduate Academic Facilities (HEA Section 704).

(3) The official name, address and telephone number of the State Commission.

(4) The names, mailing addresses and terms of office of the members of the State Commission.

(5) The name, title, mailing address and telephone number of the principal staff officer of the State Commission.

(6) A letter, signed by the Governor, explaining how the membership of the State Commission meets the "broadly and equitably representative" requirements of Section 1202(a) and what provisions have been made to ensure continuing compliance with these requirements of the law.

The above information may be sent by mail or hand-delivered.

(a) *Information sent by mail.* Information sent by mail should be addressed to the U.S. Commissioner of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. The information will be considered to be received on time if:

(1) The information was sent by registered or certified mail not later than March 5, 1979 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The information is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time date stamp of the mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

(b) *Information delivered by hand.* Information to be delivered by hand must be taken to Room 4004, 400 Maryland Avenue SW., Washington, D.C. Hand-delivered information will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time, except Saturdays, Sundays, and Federal holidays. Information will not be accepted after 4:00 p.m on the closing date.

(20 U.S.C. 1142b.)

Dated: February 5, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

(Catalog of Federal Domestic Assistance Number 13.550; State Postsecondary Education Commissions)

[FR Doc. 79-4823 Filed 2-13-79; 8:45 am]

[4110-39-M]

National Institute of Education

WOMEN'S EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

Closing Date for Receipt of Applications

Notice is given that applications are being accepted for grants in the Women's Educational Equity Research Grants Program according to the authority contained in section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e).

This announcement covers applications for new awards that are to be considered in Fiscal Year 1979. Awards will be made for research on the informal social processes which influence women's achievement, particularly in the areas of mathematics, science, and technology, and with special attention to racial, ethnic, and socio-economic diversity.

An individual, a college university, State department of education, local education agency, other public or private agency, organization or group, or any combination of these is an eligible applicant.

CLOSING DATE: May 10, 1979.

A. *Application and program information:* Persons who wish to receive the program announcement may request one by sending a self-addressed mailing label to the Social Processses/Women's Research Team, National Institute of Education, Washington, D.C., 20208 (202-254-6572). The program announcement includes the guidelines governing the program, information on the availability of funds, expected number of awards eligibility and review criteria, and instructions on how to apply. Prospective applicants who have previously requested that their names be placed on the mailing list for this program will be sent copies of the announcement as soon as it is available.

B. *Estimated distribution of program funds:* The program has a proposed funding allocation of $500,000 in Fiscal Year 1979. It is expected that there will be about 10-25 project awards. The program will support only projects of the highest quality. Funded projects normally will not exceed 12 months in duration; however, multi-year proposals for projects up to three years duration will be accepted in this competition. If the Institute makes an award for longer than twelve months, the recipient can expect to receive funding as described in the award unless (1) the Director terminates or suspends the award in accordance with regulations or (2) appropriations are not available. Further, nothing in the announcement will commit the Institute to award any specific amount. The actual total of funds awarded may change because of a need to reserve funds for continuation of projects begun earlier, for contract or in-house research, or because of budget or staffing restrictions.

C. *Applications delivered by mail:* An application sent by mail must be addressed to the Proposal Clearinghouse, National Institute of Education, Attention: Women's Educational Equity Research Grants, Room 813, 1200 19th Street NW, Washington, D.C., 20208. Applications will be accepted only if they are mailed on or before the closing date and the following proof of mailing is provided:

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that the late application will not be considered in the current competition.

D. *Applications delivered by hand:* An application that is hand-delivered must be taken to the Proposal Clearinghouse, National Institute of Education, Room 813, 1200 19th Street, NW, Washington, D.C. The proposal Clearinghouse will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications for new awards that are hand-delivered will not be accepted after 4:30 p.m., May 10, 1979.

E. *Applicable regulations:* The regulations applicable to this program include the National Institute of Education General Provisions Regulations (45 CFR Part 1400-1424) published in the FEDERAL REGISTER on November 4, 1974, 39 FR 38992, and the Educational Equity Research Grants Program Final Regulations (45 CFR Part 1490) published in the FEDERAL REGISTER on September 26, 1978, 43 FR 43672.

(Catalog of Federal Domestic Assistance Number 13.950, Educational Research and Development)

Dated: February 8, 1979.

PATRICIA ALBJERG GRAHAM,
Director, National Institute of Education.

[FR Doc. 79-4776 Filed 2-13-79; 8:45 am]

[4110-07-M]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Public Meetings

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Public Law 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Sunday, March 11, 1979, from 10:30 a.m. to 8:00 p.m. and Monday, March 12, 1979, from 9:00 a.m. to 5:00 p.m. at Marriott Twin Bridges Hotel, U.S. 1 and I-395, Washington, D.C. 20024. The meetings will be devoted to the topic of disability insurance issues. On March 11, there will be a report of the actuarial and economic consultants to the Council.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the Social Security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT:

Mr Lawrence H. Thompson, Executive Director, Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235.

Telephone inquiries should be directed to Mr. Edward F. Moore, (301) 594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.807 Social Security Program.)

Dated: February 9, 1979.

LAWRENCE H. THOMPSON,
Executive Director, Advisory Council on Social Security.

[FR Doc. 79-4806 Filed 2-13-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Correction to Notice of Filing of Plat of Survey

JANUARY 23, 1979.

In FR Doc 78-35474, appearing on page 59553 in the issue of Thursday, December 21, 1978, the Official filing date should read January 19, 1979, rather than January 19, 1978.

Dated: January 29, 1979.

IRVING ZIRPEL, Jr.,
Chief, Division of Cadastral Survey.

[FR Doc. 79-4761 Filed 2-13-79; 8:45 am]

[4310-84-M]

ROCK SPRINGS DISTRICT ADVISORY BOARD

Meeting

FEBRUARY 5, 1979.

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Rock Springs District Grazing Advisory Board will be held on March 21, 1979.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management District Office on Highway 187 North, Rock Springs, Wyoming.

The agenda for the meeting will include: (1) A discussion of proposed Allotment Management Plans for the Sandy Environmental Statement Area; (2) the expenditure of range betterment and Advisory Board funds for range improvements; (3) a public comment period and; (4) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30 and 2:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make oral statements must notify the District Manager, Bureau of Land Management, Highway 187 North, Rock Springs, Wyoming 82901 by March 19, 1979. Depending on the number of persons wishing to make oral statements a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

JERRY OSTROM,
Assistant District Manager.

[FR Doc. 79-4819 Filed 2-13-79; 8:45 am]

[4310-10-M]

Office of the Secretary

PRIVACY ACT OF 1974

Systems Notice

Notice is hereby given that the Department of the Interior has under consideration an amended system notice describing a record system which will be maintained and will be subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system is:

Hunting and Fishing Survey Records—Interior, Fish and Wildlife Service—6

The system notice, as amended, is published below.

Comments on the amended notice may be submitted to the Departmental Privacy Act Officer, Office of Administrative and Management Policy, U.S. Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240. All comments received on or before March 7, 1979, will be considered. Copies of any comments may be inspected in Room 5316 at the above address.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

FEBRUARY 5, 1979.

System name: Hunting and fishing Survey Records—Interior, FWS-6

System Location: *Division of Program Plans*, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240

Categories of individuals covered by the system: Contains days of participation and expenditures of individuals participating in hunting, fishing and nonconsumptive wildlife activities.

Authority for maintenance of the system: Federal Property and Administrative Services Act of 1949, as amended; the Fish and Wildlife Act of 1956 (16 U.S.C. 741a-7421); the Federal Aid in Wildlife and Fish Restoration Acts of 1937 and 1950, as amended, 16 U.S.C. 777-777k, 669-669i.

Routine uses of records maintained in the system, including categories of uses and the purpose of such uses: The primary use of the records is the development of statistical analyses to assist *State and Federal governments* in managing wildlife resources. Disclosures outside the Department of the Interior may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, assessing, retaining and disposing of records in the system: (1) Storage: magnetic tape

(2) Retrievability: indexed by identification number.

(3) Safeguards: maintained in accordance with the provisions of 43 CFR 2.51.

(4) Retention and disposal: *for each survey that uses this system*, the records will be maintained until summary analyses are completed, after which the names and addresses will be destroyed.

System manager and address: Chief, *Division of Program Plans*, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

Notification procedure: Inquiries regarding the existence of records should be addressed to the System manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

Record access procedures: A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

Contesting record procedures: A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

Record source categories: Individual on whom the record is maintained.

[FR Doc. 79-4824 filed 2-13-8:45 am]

[4310-84-M]

[Wyoming 66325]

WYOMING

Notice of Application

FEBRUARY 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 112 W.,
Sec. 20, SW¼SW¼.

The pipeline will transport natural gas produced from the Champlin 358 Well located in the NW¼ of section 29 to a point of connection with Northwest Pipeline Corporation's existing pipeline in the NW¼SE¼ of section 19, T. 18 N., R. 112 W., 6th P.M., Uinta County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4762 Filed 2-13-79; 8:45 am]

[4310-84-M]

[Wyoming 66858]

WYOMING

Notice of Application

FEBRUARY 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 28 N., R. 112W.,
Sec. 15, NW¼NW¼ and S½NW¼;
Sec. 18, S½NE¼.

The pipeline is a proposed addition to an existing gathering system transporting natural gas from a well in the SE¼NW¼ section 15 into an existing pipeline in NE¼ section 18, T. 28 N., R. 112 W., in Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4763 Filed 2-14-79; 8:45 am]

[4310-84-M]

[Wyoming 66324]

WYOMING

Notice of Application

FEBRUARY 2, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 30 N., R. 113 W.,
Sec. 28, SE¼SW¼;
Sec. 33, NE¼NW¼.

The pipeline will transport natural gas produced from the Belco S-27-33 Well located in the NE¼NW¼ of section 33 to a point of connection with Northwest Pipeline Corporation's existing pipeline in the SE¼SW¼ of section 28, all within T. 30 N., R. 113 W., Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4764 Filed 2-13-79; 8:45 am]

[4310-84-M]

[Wyoming 66323]

WYOMING

Notice of Application

FEBRUARY 2, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act o 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 30 N., R. 113 W.,
Sec. 27, SW¼SW¼.

The pipeline will transport natural gas produced from the S-29-27 Well to a point of connection with Northwest Pipeline Corporation's existing pipeline all within the SW¼SW¼ of section 27, T. 30 N., R. 113 W., Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4765 Filed 2-13-79; 8:45 am]

[8230-01-M]

INTERNATIONAL COMMUNICATION AGENCY

CULTURALLY SIGNIFICANT OBJECTS FROM THE UNION OF SOVIET SOCIALIST REPUBLICS

[Public Notice 538—Amendment No. 1]

Presentation Specimen Colt Revolvers; Extension of Exhibition within the United States

Pursuant to the authority vested in me by Pub. L. 89-259 of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978) I hereby amend Public Notice No. 538, published in the FEDERAL REGISTER on May 2, 1977 (42 FR 22212), by adding to the places of exhibition or display: The Metropolitan Museum of Art, New York, New York, and by extending the period of display in the United States by an additional period of twelve months.

The additional exhibition is pursuant to agreement between the Metropolitan Museum of Art and Colt Industries, Inc.

Notice of this amendment of the determination is ordered to be Published in the FEDERAL REGISTER.

Dated: February 7, 1979.

JOHN E. REINHARDT,
Director, International Communication Agency.

[FR Doc. 79-4777 Filed 2-13-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[TA-201-38]

CERTAIN MACHINE NEEDLES

Report to the President

FEBRUARY 7, 1979.

TO THE PRESIDENT: In accordance with section 201(d)(1) of the Trade Act of 1974 (19 U.S.C. 2251(d)(1), 88 Stat. 1978), the United States International Trade Commission herein reports the results of an investigation relating to certain machine needles.

On the basis of the information developed in investigation No. TA-201-38 the Commission [1] unanimously determines that needles for machines for making nonwoven or nonknit fabrics; needles for knitting, embroidery, and other textile machines; and needles for sewing machines, except sewing machines designed for household use; provided for in items 670.35; 670.58, 670.60, 670.62, 670.64, and 670.74; and 672.20 of the Tariff Schedules of the United States (TSUS), are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

The Commission instituted this investigation under the authority of section 201(b)(1) of the Trade Act on August 25, 1978, following receipt on August 7, 1978, of a petition filed by the Torrington Co., Torrington, Conn.

The investigation was undertaken to determine whether needles for machines for making nonwoven or nonknit fabrics; needles for knitting, embroidery, and other textile machines; and needles for sewing machines, except sewing machines designed for household use; provided for in TSUS items 760.35; 670.58, 670.60, 670.62, 670.64, and 670.74; and 672.20, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

A public hearing in connection with the investigation was held in the Commission's hearing room in Washington, D.C., on November 20 and 21, 1978. All interested persons were afforded the opportunity to be present, to produce evidence, and to be heard. A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation are attached.[2] Notice of the investigation and hearings was duly given by publishing the notice in the FEDERAL REGISTER of August 31, 1978 (43 FR 38949).

The information contained in this report was obtained from fieldwork, and questionnaires sent to domestic producers and importers, and from the Commission's files, other Government agencies, and information presented at the hearing and in briefs filed by interested parties.

By order of the Commission.

Issued: February 9, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4884 Filed 2-13-79 8:45 am]

[1] Chairman Joseph O. Parker, Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell, and Paula Stern.

[2] Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

[7020-02-M]

[TA-203-5]

STAINLESS STEEL AND ALLOY TOOL STEEL

Change of Time of Prehearing Conference

Notice is hereby given that the prehearing conference in this investigation scheduled for Tuesday, February 13, 1979, will be held at 2 p.m., e.s.t., rather than at 10 a.m., as previously announced. The conference will be held in Room 117 of the U.S. International Trade Commission Building.

Notice of the investigation and hearing was published in the FEDERAL REGISTER of December 22, 1978 (43 FR 59914), and notice of change of the date of the hearing was published in the FEDERAL REGISTER of January 9, 1979 (44 FR 2028).

By order of the Commission.

Issued: February 9, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4885 Filed 2-13-79; 8:45 am]

[4110-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-2]

RAPHAEL C. CILENTO

Notice of Hearing

Notice is hereby given that on December 27, 1978, the Drug Enforcement Administration, Department of Justice, issued to Raphael C. Cilento, M.D., Brooklyn, New York, an Order to Show Cause as to why the Drug Enforcement Administration should not deny Respondent's application for registration, executed July 17, 1978.

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, February 27, 1979, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated: February 6, 1979.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 79-4796 Filed 2-13-79; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

FEBRUARY 7, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Legal Aid Services in Casper, Wyoming to serve Big Horn, Washakee, partial Hot Springs, partial Fremont, Park and Converse Counties.

2. Legal Services for Laramie County in Cheyenne, Wyoming to complete service to Albany County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Seattle Regional Office, 506 Second Avenue, Seattle, Washington 98104.

THOMAS EHRLICH,
President.

[FR Doc. 79-4862 Filed 2-13-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 8, 1979.

The Legal Services Corporation was established pursuant to the Legal

Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid of Central Michigan in Lansing, Michigan to serve Barry County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, Virginia.

THOMAS EHRLICH,
President.

[FR Doc. 79-4863 Filed 2-13-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 8, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid Bureau in Baltimore, Maryland to serve Baltimore, Frederick, Carroll and Cecil Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Philadelphia Regional Office, 101 North 33rd Street, Suite 404, Philadelphia, PA 19104.

THOMAS EHRLICH,
President.

[FR Doc. 79-4864 Filed 2-13-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 8, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Central Minnesota Legal Services in Minneapolis, Minnesota to serve Kandiyohi, Renville, Yellow Medicine, Chippewa, Lac qui Parle, Swift, Big Stone, Isanti, Chisago, Lincoln and Lyon Counties.
2. Southern Minnesota Regional Legal Services in St. Paul, Minnesota to serve Scott, Carver, Waseca, McLeod, LeSueur, Steele, Dodge, Freeborn, Mower, Sibley, Jackson, Cottonwood, Redwood, Nobles, Murray, Rock and Pipestone.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

THOMAS EHRLICH,
President.

[FR Doc. 79-4865 Filed 2-13-79; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

VISUAL ARTS PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photographer's Exhibition Aid) to the National Council on the Arts will be held on March 7, 1979, from 9:30 a.m.-5:30 p.m.; March 8, 1979, from 9:30 a.m.-5:30 p.m.; March 9, 1979, from 9:30 a.m.-5:30 p.m., in Room 1422 on March 7th, and in Room 1115 on March 8 and 9, of the Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

FEBRUARY 7, 1979.

[FR Doc. 79-4820 Filed 2-13-79; 8:45 am]

[7537-01-M]

VISUAL ARTS PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Craftsmen's Fellowships) to the National Council on the Arts will be held on March 14, 1979, from 9:30 a.m.-5:30 p.m.; March 15, 1979, from 9:30 a.m.-5:30 p.m.; March 16, 1979, from 9:30 a.m.-5:30 p.m., in Room 1115 of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

FEBRUARY 7, 1979.

[FR Doc. 79-4821 Filed 2-13-79; 8:45 am]

[7536-01-M]

National Endowment for the Humanities

HUMANITIES PANEL

Meeting

FEBRUARY 9, 1979.

Pursuant to the provisions of the Federal Advisory Committee (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506:

1. Date: March 1 and 2, 1979. Time: 9 a.m. to 5:30 p.m. Room: 1130. Purpose: To review NEH Challenge Grant applications submitted to the National Endowment for the Humanities for projects beginning after October 30, 1979.

2. Date: March 5 and 6, 1979. Time: 9 a.m. to 5:30 p.m. Room: 807. Purpose: To review NEH Challenge Grant applications submitted to the National Endowment for the Humanities for projects beginning after October 30, 1979.

3. Date: March 8 and 9, 1979. Time: 9 a.m. to 5:30 p.m. Room: 807. Purpose: To review NEH Institutional Development Grant applications submitted to the National Endowment for the Humanities for projects beginning after July 1, 1979.

4. Date: March 15 and 16, 1979. Time: 9 a.m. to 5:30 p.m. Room: 807. Purpose: To review Higher Education Projects applications submitted to the National Endowment for the Humanities for projects beginning after July 1, 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 79-4861 Filed 2-14-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

SUBCOMMITTEE ON EVALUATION OF LICENSEE EVENT REPORTS

Meeting

The ACRS Subcommittee on Evaluation of Licensee Event Reports will hold an open meeting on March 1 and 2, 1979, in Room 1046, 1717 H Street, NW, Washington, DC 20555.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

THURSDAY, MARCH 1, 1979

8:30 a.m. until the conclusion of business.

FRIDAY, MARCH 2, 1979

8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, representatives of the NRC Staff and their consultants, to continue its review of Licensee Event Reports submitted during the period 1976-1978.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Robert L. Wright, Jr., (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Dated: February 9, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-4852 Filed 2-13-79; 8:45 am]

[7590-01-M]

[Docket No. 50-549]

POWER AUTHORITY OF THE STATE OF NEW YORK

Notice of Availability of Final Environmental Statement for the Greene County Nuclear Power Plant

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement prepared by the Commissions's Office of Nuclear Reactor Regulation, related to the proposed construction of the Greene County Nuclear Power Plant to be located in Greene County, New York is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and in the Catskill Public Library, 1 Franklin Street, Catskill, New York. The Final Environmental Statement is also being made available at the State Clearinghouse, New York State Division of the Budget, State Capitol, Albany New York.

The notice of availability of the Draft Environmental Statement for the Greene County Nuclear Power Plant and requests for comments from interested persons was published in the FEDERAL REGISTER on March 11, 1976 (41FR 10485). The comments received from Federal, State, and local agencies and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (Document No. NUREG-0512) may be purchased, at $23.50 for printed copies and $3.00 for microfiche, from the National Technical Information Service, Springfield, Va. 22161. Dated at Bethesda, Maryland, this 30 day of January 1979.

For the Nuclear Regulatory Commission.

O. D. T. LYNCH, Jr.,
Acting Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-4774 Filed 2-13-79; 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

[107-1]

ETHICS IN GOVERNMENT ACT OF 1978

Appointment of Designated Agency Official

Pursuant to the authority vested in me and in implementation of the Ethics in Government Act of 1978 (Pub. L. 95-521), the General Counsel is appointed "Designated Agency Official" for the Department of the Treasury within the meaning of that law and with the right to redelegate.

ROBERT CARSWELL,
Deputy Secretary.

[FR Doc. 79-4775 Filed 2-13-79; 8:45 am]

[4810-22-M]

GRAIN ORIENTED SILICON ELECTRICAL STEEL FROM ITALY

Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in preliminary determination that a producer and exporter to the United States of grain oriented silicon electrical steel does not receive from the Government of Italy benefits which are bounties or grants under the countervailing duty statute (19 U.S.C. 1303).

EFFECTIVE DATE: February 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Office of Tariff Affairs, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-8585.

SUPPLEMENTARY INFORMATION: On April 25, 1978, a "Notice of Receipt of Information and Initiation of Countervailing Duty Investigation" was published in the FEDERAL REGISTER (43 FR 17560). That notice stated:

"On October 11, 1977, a "Final Countervailing Duty Determination" was published in the FEDERAL REGISTER (42 FR 54899). The notice stated that Terni-Societa per l'Industria e l'Elettricita, S.p.A., ('Terni'), had not received from the Government of Italy, directly or indirectly, any bounties or grants on its exports of grain oriented silicon electrical steel within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

"Among the alleged benefits claimed by petitioner to constitute bounties or grants was the purchase of stock or conversion of debt to equity in Terni's parent, Finsider, S.p.A., by the Istituto per la Ricostruzione Industriale ('IRI'), and agency of the Italian Government under the Ministry of State Participations. The available evidence indicated that no such transaction had occured since 1965, a date deemed too remote from Terni's expansion to have an impact on its current exports, and that to the extent Finsider had invested in Terni since 1965, it had done so with funds internally generated or raised in capital markets on commercial terms. Accordingly, it was determined that even if Finsider's recent decision to expand Terni were made at the suggestion or direction of the Italian Government, no bounty or grant within the meaning of the Law exists. The final determination then stated:

"Of course if, in the future, the Italian Government should, either through IRI or otherwise, increase Finsider's available funds, on other than terms that may reasonably be regarded as commercial, this conclusion may require reconsideration."

On November 11, 1977, petitioner submitted information alleging that payments or bestowals conferred by the Government of Italy upon the manufacture, production or exportation of grain oriented silicon electrical steel by Terni Societa per l'Industria e l'Elettricita, S.p.A. ("Terni") constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

Grain oriented silicon electrical steel is provided for in the Tariff Schedules of the United States under item numbers 608.88 and 609.07.

On the basis or and investigation conducted pursuant to § 159.47(c), Customs Regulations (19 CFR 159.47(c)), it preliminarily has been determined that no benefits have been received by Terni which constitute bounties or grants within the meaning of the Act. The alleged benefit preliminarily determined not to constitute a bounty or grant based on the information available and analysis to date is described below.

Petitioner submitted information indicating that on October 3, 1977, Finsider, S.p.A., the parent company of Terni, held a special shareholders' meeting at which a 390 billion lire increase in share capital was approved. The shareholder resolution approved issuance of 780 million shares with a par value of 500 lire, and the offer of an option to all shareholders to purchase at par two newly-issued shares for each one held. Although the stock market value of Finsider's shares was then 85 lire per share, the Istituto per la Ricostruzione Industriale ("IRI"), an agency of the Italian Government under the Ministry of State Participations, not only agreed to purchase its quota of the newly-issued stock (58 percent of the offering) at par but also agreed to buy the remainder of the offering and to hold it in escrow for five years to enable Finsider's minority shareholders to purchase their *pro rata* portions at 500 lire per share. Accordingly, it was concluded that a new investigation of grain oriented silicon electrical steel from Italy was warranted. Investigation of the above-described recapitalization has revealed the following facts:

At the IRI Board of Directors' meeting of August 1, 1977, and at the Finsider shareholders' meeting of October 3, 1977, it was agreed to:

1. Increase the capitalization of Finsider by 390 billion lire in several stages, the cost of which was to be borne by IRI;

2. Increase the Capitalization of Italsider, S.p.a., a Finsider subsidiary, by a sum not less than credits to be transferred from IRI to Finsider, with the cost of such increase in share capital to be borne by Finsider;

3. Transfer IRI credits with Italsider to Finsider; and

4. Transfer the outstanding Italsider debt with IRI to Finsider.

The increase in capital of Finsider was to be accomplished in serveral stages, the first two of which have been completed and which increased Finsider's capital by an amount equivalent to the amount of indebtedness of Italsider. Since at this time the total amounts received by Finsider from IRI have been the precise equivalent of the conversion of the Italsider debt, it is clear that no benefits have been received by Terni, a subsidiary company of Finsider which is not otherwise related to Italsider. At some future stage, the remainder of the funds by which IRI has agreed to increase the share capital of Finsider, will probably be received by the latter company which may, in turn, invest it in one or more subsidiaries. At such time, Treasury will determine the extent to which the receipt by Finsider of such a capital infusion has, directly or indirectly, benefited Terni and the extent to which such receipt benefits Terni's production of grain oriented silicon electrical steel. The Treasury will monitor future actions by Finsider along these lines.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitutions Avenue, NW., Washington, D.C. 20229, in time to be received by his office no later than March 16, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, Revision 15, March 16,

1978, the provisions of Treasury Department Order No. 165, Revised November 2, 1954, and § 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 8, 1979.

[FR Doc. 79-4817 Filed 2-13-79; 8:45 am]

[4810-22-M]

Office of the Secretary

CARBON STEEL PLATE FROM TAIWAN

Antidumping; Notice of Withholding of Appraisement and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that carbon steel plate from Taiwan produced by China Steel corporation is being sold at less than fair value under the Antidumping Act, 1921. Appraisement of entries of this merchandise from China Steel Corporation will be suspended for 3 months. This case is being referred to the U.S. International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: February 14, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Kugelman, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On October 25, 1978, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER (43 FR 49875). This investigation was initiated by the Treasury Department in conjunction with its administration of the "Trigger Price Mechanism" (TPM), a program established in December, 1977, to monitor prices at which certain steel mill products enter the United States. As stated in the FEDERAL REGISTER of December 30, 1977 (42 FR 65214), the TPM consists of four major parts: (1) The establishment of trigger prices for certain steel mill products imported into the United States; (2) the use of a Special Summary Steel Invoice ("SSSI") applicable to imports of all steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of steel mill products exported to the United States, and (b) the condition of the domestic steel industry; and (4) where appropriate, the expedited initiation and disposition of proceedings under the Antidumping Act of 1921 with respect to imports entering the U.S. at prices below the Trigger Prices.

This case was initiated after information developed from SSSI's indicated that imports of carbon steel plate from Taiwan produced by China Steel Corporation (CSC) were being sold at prices less than the appropriate "trigger price" for that product and further investigation revealed the possibility that the subject carbon steel plates were being, or were likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C.. 160 *et seq.*) (hereinafter referred to as "the Act"). Evidence was developed regarding injury or the likelihood of injury to the U.S. domestic industry caused by CSC's allegedly less than fair value exports to the U.S.

For purposes of this determination, the term "carbon steel plate" means hot rolled carbon steel plate, not coated or plated with metal and not clad, other than black plate, not alloyed, and other than in coils. This merchandise is classified under item 608.8415 of the Tariff Schedules of the United States, Annotated.

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, carbon steel plate from Taiwan produced by China Steel Corporation is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and basis for the above determination are as follow:

a. *Scope of the Investigation.* The only evidence of sales to the U.S. of carbon steel plate from Taiwan at prices below the applicable "trigger prices" was with respect to carbon steel plate manufactured by CSC. Consequently, this determination only applies to carbon steel plate manufactured by CSC. This investigation encompassed all shipments of carbon steel plate to the United States by CSC during August and September, 1978.

b. *Basis of Comparison.* For purposes of this determination, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States of hot rolled carbon steel plate from CSC were made to unrelated purchasers in the United States prior to the dates of exportation. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide an adequate basis for comparison.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was requested concerning U.S. imports during the period August 1 through September 30, 1978. Home market price data was requested for the period corresponding to the dates of purchase of the U.S. sales. CSC declined to furnish home market prices. Therefore, this determination is based on such information as was otherwise available, pursuant to § 153.31(a), Customs Regulations (19 CFR 153.31(a)).

(c). *Purchase Price.* For the purpose of this determination, purchase price has been calculated on the basis of the ex-factory prices to the United States purchasers, with an addition for certain taxes paid upon the importation of raw materials which were rebated upon the export of the steel plate.

d. *Home Market Price.* Data available to the Treasury Department clearly establishes "home market prices" as the appropriate basis for calculating "fair value." However, due to the refusal of CSC to provide verified home market price data, recourse was made to such other information as was available regarding home market prices. In conjunction with its operation of the TPM, the U.S. Customs Service requires every import of steel mill products covered by the TPM to be accompanied by an SSSI. The price of comparable steel products in the home market is one of the entries required on the SSSI. Home market prices in this case were calculated from the data supplied on SSSI's submitted with imports of carbon steel plate produced by CSC during the period of investigation, with dates of purchase corresponding to the dates of the U.S. sales.

No deduction for inland freight was made due to the refusal of CSC to supply data from which the appropriate deduction could be calculated and which the Customs Service could verify.

e. *Result of Fair Value Comparisons.* Using the above criteria, comparisons were made on 100 percent of the sales of hot rolled carbon steel plate to the United States by CSC during the period of investigation. These comparisons indicate that the purchase price was less than the home market price of such or similar merchandise in all instances. The weighted-average margin of dumping on these sales amounted to 34 percent.

The Secretary has provided an opportunity to known interested parties to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Customs officers are being directed to withhold appraisement of hot rolled carbon steel plate from Taiwan produced by CSC, in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This notice, which is published pursuant to section 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective February 14, 1979. It shall cease to be effective at the expiration of 3 months from the date of this publication unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 7, 1979.

[FR Doc. 79-4816 Filed 2-13-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Notice of Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on March 6, 1979, at 10:00 a.m., the San Diego Regional Office Station Committee on Educational Allowances shall at Room 501, 2022 Camino del Rio North, San Diego, California 92108, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in American Flight School, Gillespie Field, 1935 North Marshall, El Cajon, California 92020 should be discontinued, as provide in 38 C.F.R. 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: February 2, 1979.

HERBERT R. RAINWATER,
Director, VA Regional Office.

[FR Doc. 79-4766 Filed 2-13-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Amend. No. 2 to Revised Exemption No. 155]

ALL RAILROADS

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

FEBRUARY 9, 1979.

Upon further consideration of Revised Exemption No. 155 issued January 19, 1979.

It is ordered, That under the authority vested in me by Car Service Rule 19, Revised Exemption No. 155 to the Mandatory Car Service Rules Ordered in Ex Parte No. 241, is amended to *expire February 9, 1979.*

This amendment shall become effective February 2, 1979.

Issued at Washington, D.C., February 2, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4834 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to Exception No. 12]

ALL RAILROADS

Exception Under Section (a), Paragraph (1), Part (v) Second Revised Service Order No. 1332

Decided February 2, 1979.

BY THE BOARD

Upon further consideration of Exception No. 12 and good cause appearing therefor:

It is ordered,

Exception No. 12 to Second Revised Service Order No. 1332 is amended to:

Expire February 9, 1979.

Issued at Washington, D.C., February 2, 1979.

ROBERT S. TURKINGTON,
Acting Chairman
Railroad Service Board.

[FR Doc. 79-4835 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Amdt. No. 3 to I.C.C. Order No. 16 Under Service Order No. 1344]

ALL RAILROADS

Rerouting Traffic

FEBRUARY 9, 1979.

Upon further consideration of I.C.C. Order No. 16, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 16 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 9, 1979, unless otherwise modified, changed or suspended.

Effective date. This order shall become effective at 11:59 p.m., February 2, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 2, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4830 Filed 2-13-79; 8:45 am]

[7035-01-M]

Office of Hearings

[Notice No. 26]

ASSIGNMENT OF HEARINGS

FEBRUARY 9, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 123407 (Sub-495F), Sawyer Transport, Inc., now assigned for hearing April 23, 1979 (1 week), at Billings, Montana in a hearing room to be later designated.

MC 114569 (Sub-240F), Shaffer Trucking, Inc., now assigned for hearing April 17, 1979 at Philadelphia, Pennsylvania (9 days) in a hearing room to be later designated.

MC 124692 (Sub-200F), Sammons Trucking now assigned for hearing April 18, 1979 (3 days) at Billings, Montana in a hearing room to be later designated.

MC 61231 (Sub-127F), Easter Enterprises, Inc., DBA Ace Line now assigned for hearing April 17, 1979 at Billings Montana (1 day) in a hearing room to be later designated.

MC 111320 Sub 69, Keen Transport, Inc., now assigned continued hearing April 3, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 32166 Sub 10, Bronaugh Motor Express, Inc., now assigned continued hearing March 7, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 145137F, Eight Way Xpress, Inc., now assigned March 13, 1979, at Chicago, Ill., is postponed indefinitely.

MC 37093, Joint Rates Via The Ann Arbor Railroad System, December 1978, now being assigned for hearing on March 13, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114211 Sub 370F, Warren Transport, Inc., now being assigned March 13, 1979, (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 25798 Sub 347, Clay Hyder Trucking Lines, Inc., now being assigned March 14, 1979, (3 days), at Philadelphia, Pa., in a hearing room to be later disignated.

MC 2228 Sub 69F, Merchants Fast Motor Lines, Inc., now being assigned continued hearing March 14, 1979, (3 days), at the Offices of the New Mexico Corporation Commmission, Santa Fe, New Mexico.

MC 121683 (Sub-3F), Jackson Express, Inc., now assigned for hearing on March 13, 1979, at Jackson, Tennessee in a hearing room to be later designated.

MC 117574 Sub 312F, Daily Express, Inc., now being assigned continued hearing February 20, 1979, (4 days), at the Ramada Inn Atlanta Central, I-85 North at Monroe Drive, Atlanta, Ga., and continued to March 13, 1979, (1 day), at the Des Moines Hilton Inn, 111 Fleur Drive, Des Moines, Ia., and continued to March 15, 1979, (7 days), at Chicago, Ill., in a hearing room to be later designated.

MC 117604 (Sub-11), Early Rival Motor Express, Inc., now assigned for hearing on March 19, 1979, (2 weeks), at Atlanta, Georgia in a hearing room to be later designated.

MC 2908 (Sub-24), Capital Motor Lines, DBA Capital Trailways, now assigned for hearing on March 19, 1979, at Montgomery, Alabama and will be held in Room 816, Aronov Building.

MC 136828 (Sub-26F), Cook Transports, Inc., now assigned for hearing on March 13, 1979, at Birmingham, Alabama and will be held in Room 430, U.S. Court & Federal Building.

MC 114274 (Sub-50F), Vitalis Truck Lines, Inc., now assigned March 6, 1979, at Chicago, Illinois, is canceled, transferred to Modified Procedure.

MC 32882 (Sub-96F), Mitchell Bros. Truck Lines, A Corp., now assigned for hearing on March 13, 1979, at Los Angeles, Calif. and will be held in Room 203, U.S. Courthouse.

MC 22301 (Sub-26F), Sious Transportation Company, Inc., now assigned for hearing on March 12, 1979, at Sioux Falls, South Dakota and will be held in Room D-19, Fed. Bldg., & U.S. Courthouse.

MC 113678 (Sub-748F), Curtis, Inc., No. MC—113678 (Sub-No. 761F), Curtis, Inc., now assigned for hearing on March 20, 1979, (4 days), at Orlando, Florida in a hearing room to be later designated.

MC 109708 (Sub-87F), Indian River Transport Co., DBA, Indian River Transport, Inc., now assigned for hearing on March 26, 1979, (2 days), at Orlando, Florida in a hearing room to be later designated.

MC 144140 (Sub-21F), Southern Freightways, Inc., now assigned for hearing on March 28, 1979, (3 days), at Orlando, Florida in a hearing room to be later designated.

MC 144979 F, Daniel P. Geiger DBA Atlantic Limousine Service, now assigned for hearing on March 6, 1979, at Atlantic City, New Jersey and will be held in the Boardwalk Regency Hotel, 2100 Pacific Avenue.

MC 128469 (Sub-4F), John J. Conahan DBA Central Air Freight Service, now assigned for hearing on March 1, 1979, at Philadelphia, Pennsylvania and will be held in the New U.S. Court House, 601 Market Street.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4839 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 22 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

FEBRUARY 9, 1979.

Upon further consideration of I.C.C. Order No. 22, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 22 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 9, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 2, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., February 2, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4831 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 24 under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

FEBRUARY 9, 1979.

Upon further consideration of I.C.C. Order No. 24 and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 24 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 9, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 5, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 5, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4838 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Revised I.C.C. Order No. 21 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

FEBRUARY 9, 1979.

In the opinion of Robert S. Turkington, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is unable to transport promptly all traffic offered for movement, to, from or via stations on its lines in the States of Illinois, Wisconsin and Indiana, because of snow drifts.

It is ordered,

(a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, being unable to transport promptly all traffic offered for movement to, from or via stations on its lines in the States of Illinois, Wisconsin and Indiana, because of snow drifts, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no agreements, contracts or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., February 2, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 9, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 2, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4832 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28952F]

DENVER & RIO GRANDE WESTERN RAILROAD CO.

Acquisition and Operation of a Line of Railroad Near Craig in Moffat County, Colo.

THE DENVER & RIO GRANDE WESTERN RAILROAD CO. (Rio Grande) P.O. Box 5482, Denver, CO 80217, represented by Samuel R. Freeman, Vice President and General Counsel, and Kendall T. Sanford, Assistant General Attorney, The Denver & Rio Grande Western Railroad Co., P.O. Box 5482, Denver, CO 80217, hereby give notice that on the 29th day of January, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application under Section 10901 of the Interstate Commerce Act (formerly Section 1(18)) for a decision approving and authorizing the acquisition and operation of a line of railroad near Craig, CO.

Applicant proposes to acquire and operate an existing line of railroad, 6.48 miles in length, extending from a point called Ute Junction on the Colorado-Ute spur (over which Applicant has lease rights and operating rights) near Craig, CO, to a point known as Empire Junction, southwesterly of Craig, CO. Applicant is presently operating over said line by contract and, upon approval of its application, proposes to acquire and operate said line as a common carrier by railroad.

The line of railroad proposed to be acquired is located entirely within Moffat County, CO. Said line was constructed and is presently owned by Empire Energy Corporation to serve it and others' coal operations located near the terminus of said line.

In the opinion of the Applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra,* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4842 Filed 2-13-79; 8:45 am]

[7035-01-M]

Office of Proceedings

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

FEBRUARY 7, 1979.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before February 26, 1979. A copy must also be served upon

applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 115840 (Sub-E-116), filed September 12, 1977. Applicant: COLONIAL FAST FREIGHT LINES, INC., P.O. Box 10327, Birmingham, AL 35202. Representative: E. Stephen Heisley, 666 Eleventh Street, NW., Washington, D.C. 20001. *Iron and steel pipe, fittings and gaskets, and iron castings* (except commodities in bulk, and restricted against the transportation of which because of size or weight require the use of special equipment), (1) from *Decatur*, AL to points in CA, OR, WA, ID, NV, AR, MT, UT, WY, CO, NM, ND, SD, NE, TX, MN, LA, FL, ME, NH, VT, MA, RI, CT, NJ, DE, and MD, (2) from *Knoxville*, TN to points in CA, OR, WA, ID, AR, MT, UT, WY, CO, NM, SD, TX, and LA, (3) from *Memphis*, TN to point in CA, OR, WA, ID, ME, NH, VT, MA, RI, CT, NJ, DE, MD, VA, NC, and SC, (4) from *Greenville*, MS to points in CA, OR, WA, ID, NV, MT, ND, MI, IN, OH, GA, FL, NY, PA, DE, MD, WV, VA, NC, and SC, (5) from *Vicksburg*, MS to points in CA, OR, WA, ID, NV, MT, IN, ND, MN, WI, MI, KT, OH, GA, ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, WV, VA, NC, and SC, (6) from *Natchez*, MS to points in CA, OR, WA, ID, NV, MT, ND, SD, WI, MN, MI, IN, KT, OH, ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, WV, VA, NC, and SC, (7) from *Baton Rouge*, LA, to points in OR, WA, ID, NV, MT, ND, SD, MN, WI, MI, IN, IL, KT, OH, ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, WV, VA, NC, SC, and GA, (8) from *New Orleans*, LA to points in CA, OR, WA, ID, NV, AR, ND, SD, MN, WI, MI, IN, KT, OH, IL, ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, WV, VA, NC, SC, and GA, (9) from *Chattanooga*, TN to points in CA, OR, WA, ID, AR, MT, UT, WY, CO, NM, SD, TX, LA, NV, ND, and NE. (Gateway eliminated: point of Holt, AL.)

MC 119968 (Sub-E-49), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, which constitute materials and supplies used by chemical manufacturing plants, between points in NJ south of a line beginning at the PA-NJ State line extending along I Hwy 80 to junction I Hwy 95, then along I Hwy 95 to the NJ-NY State line, points in DE on and north of a line beginning at the DE-MD State line extending along DE Hwy 300 to junction DE Hwy 44, then along DE Hwy 44 to junction DE Hwy 8, then along DE Hwy 8 to the Atlantic Ocean, and points in MD on, east and north of a line beginning at the PA-MD State line extending along US Hwy 15 to junction I Hwy 70, then along I Hwy 70 to junction I Hwy 695, then along I Hwy 695 to junction US Hwy 40, then along US Hwy 40 to the MD-DE State line, on the one hand, and, on the other, points in KY east and north of a line beginning at the KY-OH State line extending along I Hwy 75 to junction I Hwy 64, then along I Hwy 64 to the KY-WV State line. (Gateway eliminated: Dover, OH.)

NOTE.—This authority expires October 31, 1981.

MC 119968 (Sub-E-50), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, as are manufactured and sold by chemical manufacturing plants (except petroleum products, in bulk, in tank trucks), when moving to or from warehouses or other facilities of chemical manufacturing plants, between points in WA and Greene Counties, PA, on the one hand, and, on the other, points in KY bounded on the west by I Hwy 75 and bounded on the east by a line beginning at the KY-OH State line extending along KY Hwy 11 to junction US Hwy 421, then along US Hwy 421 to the KY-VA State line. (Gateway eliminated: Dover, OH.)

NOTE.—This authority expires October 31, 1981.

MC 119968 (Sub-E-51), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, as are manufactured and sold by chemical manufacturing plants (except petroleum products, in bulk, in tank trucks), when moving to or from warehouses or other facilities of chemical manufacturing plants, between points in KY on and east of a line beginning at the KY-OH State line extending along KY Hwy 1 to junction KY Hwy 7, then along KY Hwy 7 to junction KY Hwy 80, then along KY Hwy 80 to junction US Hwy 421, then along US Hwy 421 to the KY-VA State line, on the one hand, and, on the other, points in the Lower Peninsula of MI on and north of US Hwy 10. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-52), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, which constitute materials and supplies used by chemical manufacturing plants, between points in WA and Greene Counties, PA, on the one hand, and, on the other, points in KY bounded on the west by I Hwy 75 and bounded on the east by a line beginning at the KY-OH State line extending along KY Hwy 11 to junction US Hwy 421, then along US Hwy 421 to the KY-WV State line. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-53), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, which constitute materials and supplies used by chemical manufacturing plants, between points in KY on and east of a line beginning at the KY-OH State line extending along KY Hwy 1 to junction KY Hwy 7, then along KY Hwy 7 to junction KY Hwy 80, then along KY Hwy 80 to junction US Hwy 421, then along US Hwy 421 to the KY-VA State line, on the one hand, and, on the other, points in the Lower Peninsula of MI on and north of US Hwy 10. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-54), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals*, in bulk, as are manufactured and sold by chemical manufacturing plants (except petroleum products, in bulk, in tank trucks), when moving to or from warehouses or other facilities of chemical manufacturing plants, between points in MD bounded on the west and north by a line beginning at the MD-VA State line extending along US Hwy 15 to junction I Hwy 70, then along I Hwy 70 to junction I Hwy 695, then along I Hwy 695 to junction US Hwy 40, then along US Hwy 40 to the MD-DE State line, and bounded on the south by a line beginning at the DC-MD State line extending along US Hwy 50 to junction MD Hwy 404, then along MD Hwy 404 to the MD-DE State line, and points in DE south of a

line beginning at the MD-DE State line extending along DE Hwy 300 to junction DE Hwy 44, then along DE Hwy 44 to junction DE Hwy 8, then along DE Hwy 8 to the Atlantic Ocean, on the one hand, and, on the other, points in KY bounded on the west by a line beginning at the KY-OH State line extending along KY Hwy 10 to junction KY Hwy 22, then along KY Hwy 22 to junction US Hwy 127, then along US Hwy 127 to junction US Hwy 62, then along US Hwy 62 to junction I Hwy 65, then along I Hwy 65 to junction US Hwy 68, and bounded on the east by a line beginning at the KY-OH State line extending along US Hwy 68 to junction I Hwy 65. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-55), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals,* in bulk, which constitute materials and supplies used by chemical manufacturing plants, between points in MD bounded on the west and north by a line beginning at the VA-MD State line extending along US Hwy 15 to junction I Hwy 70, then along I Hwy 70 to junction I Hwy 695, then along I Hwy 695 to junction US Hwy 40, then along US Hwy 40 to the MD-DE State line, and bounded on the south by a line beginning at the DC-MD State line extending along US Hwy 50 to junction MD Hwy 404, then along MD Hwy 404 to the MD-DE State line, and points in DE south of a line beginning at the MD-DE State line extending along DE Hwy 300 to junction DE Hwy 44, then along DE Hwy 44 to junction DE Hwy 8, then along DE Hwy 8 to the Atlantic Ocean, on the one hand, and, on the other, points in KY bounded on the west by a line beginning at the KY-OH State line extending along KY Hwy 10 to junction KY Hwy 22, then along KY Hwy 22 to junction US Hwy 127, then along US Hwy 127 to junction US Hwy 62, then along US Hwy 62 to junction I Hwy 65, then along I Hwy 65 to junction US Hwy 68, and bounded on the east by a line beginning at the KY-OH State line extending along US Hwy 68 to junction I Hwy 65. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-56), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals,* in bulk, which constitute materials and supplies used by manufacturing plants, between points in MD on, north and west of a line beginning at the WV-MD State line extending along US Hwy 48 to junction US Hwy 40, then along US Hwy 40 to junction I Hwy 70, then along I Hwy 70 to junction US Hwy 15, then along US Hwy 15 to the MD-PA State line, on the one hand, and, on the other, points in KY bounded on the west by a line beginning at the KY-OH State line extending along I Hwy 75 to junction KY Hwy 80, and bounded on the east by a line beginning at the OH-KY State line extending along KY Hwy 11 to junction US Hwy 421, then along US Hwy 421 to junction KY Hwy 80, then along KY Hwy 80 to junction I Hwy 75. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 119968 (Sub-E-57), filed December 15, 1978. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Michael Spurlock, 275 E. State Street, Columbus, OH 43215. *Liquid chemicals,* in bulk, as are manufactured and sold by chemical manufacturing plants (except petroleum products, in bulk, in tank trucks), when moving to or from warehouses or other facilities of chemical manufacturing plants, between points in MD on, north, and west of a line beginning at the WV-MD State line extending along US Hwy 48 to junction US Hwy 40, then along US Hwy 40 to junction I Hwy 70, then along I Hwy 70 to junction US Hwy 15, then along Hwy 15 to the MD-PA State line, on the one hand, and, on the other, points in KY bounded on the west by a line beginning at the KY-OH State line extending along I Hwy 75 to junction KY Hwy 80, and bounded on the east by a line beginning at the OH-KY State line extending along KY Hwy 11 to junction US Hwy 421, then alone US Hwy 421 to junction KY 80, then along KY Hwy 80 to junction I Hwy 75. (Gateway eliminated: Dover, OH.)

NOTE.—This authority will expire October 31, 1981.

MC 124174 (Sub-E-79), filed November 2, 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Representative: Karl E. Momsen (same as above). *Hides, skins, and pieces, thereof, and tannery products, by-products, and supplies* (except commodities in bulk, in tank vehicles) from points in WY on and north and east of a line beginning at the IA-WY State line extending along WY Hwy 89 to junction US Hwy 30, then along US Hwy 30 to junction I Hwy 80; then along I Hwy 80 to junction WY Hwy 430, then along WY Hwy 430 to CO-WY State line to points in TX on and east of a line beginning at the US-MX boundary line extending along unnumbered Hwy to Del Rio, then along US Hwy 277 to junction TX Hwy 6, then along TX Hwy 6 to junction TX Hwy 283, then along TX Hwy 283 to junction TX Hwy 34, then along TX Hwy 34 to the TX-OK State line. (Gateway eliminated: Oklahoma City, OK.)

MC 124174 (Sub-E 80), filed November 2. 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Representative: Karl E. Momsen (same as above). *Hides, skins, and pieces thereof, and tannery products, by-products,* and *supplies* (except commondities in bulk, in tank vehicles) from points in WY to points in MN on and east of a line beginning at the IA-MN State line extending along US Hwy 169 to junction US Hwy 614, then along US Hwy 614 to junction MN Hwy 4, then along MN Hwy 4 to junction I Hwy 94, then along I Hwy 94 to junction US Hwy 71, then along US Hwy 71 to junction MN Hwy 27, then along MN Hwy 27 to MN Hwy 371, then along MN Hwy 371 to junction MN Hwy 210, then along MN Hwy 210 to Duluth. (Gateway elimnated: St. Paul, MN.)

MC 124174 (Sub-E 81), filed November 2. 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Reprsenta tive: Karl E. Momsen (same as above *Hides, skins, and pieces thereof and tannery products, by-products,* and *supplies* (except commondities in bulk, in tank vehicles) from points in ND on and north of a line beginning at the MN-ND State line extending along ND Hwy 17 to junction ND Hwy 1, then along ND Hwy 1 to junction ND Hwy 200, then along ND Hwy 200 to junction ND Hwy 20, then along ND Hwy 20 to junction US Hwy 10, then along US Hwy 10 to junction ND Hwy 22, then along ND Hwy 22 to junction ND Hwy 21, then along ND Hwy 21 to ND Hwy 85, then along ND Hwy 85 to junction US Hwy 12, then along US Hwy 12 to the MT-ND State line to points in MN on and east of a line beginning at the IA-MN State line extending along MN Hwy 263 to junction MN Hwy 60, then along MN Hwy 60 to junction MN Hwy 162 to MN Hwy 100, then along MN Hwy 100 to junction I Hwy 35W, then along I Hwy 35W to junction US Hwy 8, then along US Hwy 8 to the MN-WY State line. (Gateway eliminated: St. Paul, MN.)

MC 124174 (Sub-E 82), filed November 2. 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Reprsentative: Karl E. Momsen (same as above). *Hides, skins, and pieces thereof, and tannery products, by-products,* and

supplies (except commondities in bulk, in tank vehicles) from points in CO to points in NB on and east of a line beginning at the Intersection of US Hwy 34 and US Hwy 281 extending along US Hwy 281 to the NB-SD State line, points in SD on south and east of a line beginning at the SD-NB State line extending along US Hwy 281 to junction SD Hwy 44, then along SD Hwy 44 to junction SD Hwy 45, then along SD Hwy 45 to junction SD Hwy 10, then along SD Hwy 10 to the SD-MN State line; points in MN on and east of MN Hwy 28; points in OK on and east of a line beginning at Oklahoma City extending along US Hwy 77 to the OK-TX State line; points in TX on and east of a line beginning at the OK-TX State line extending along I Hwy 35 to Austin, then along US Hwy 183 to junction US Hwy 77, then along US Hwy 77 to the US-MX International boundary line and points in IA, WI, IS, IN, MI, OH, PA, NY, VT, NH, ME, MA, NJ, MD, WV, VA, AR, KY, TN; points in Missouri within 60 miles of Auburn, NB and Asheville, NC; Buford, GA; and New Orleans, LA. (Gateways eliminated: Hastings, NE; Sioux City, IA; St. Paul, MN; and Oklahoma City, OK.)

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4837 Filed 2-13-79; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 23 Under Service Order No. 1344]

LOUISIANA MIDLAND RAILWAY CO.

Rerouting Traffic

FEBRUARY 9, 1979.

In the opinion of Robert S. Turkington, Agent, the Louisiana Midland Railway Company is unable to transport promptly all traffic offered for movement over its lines between Vidalia, Louisiana, and Packton, Louisiana, because of track conditions.

It is ordered,

(a) *Rerouting traffic.* The Louisiana Midland Railway Company, being unable to transport promptly all traffic offered for movement over its lines between Vidalia, Louisiana, and Packton, Louisiana, because of track conditions, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification of shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4:00 p.m., January 29, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 6, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 29, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-4833 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Notice No. 157]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 14, 1979.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77929. By application filed November 27, 1978, MEL MOTOR EXPRESS, INC., 111 East Canal Street, Picayune, MS 39466, seeks temporary authority to transfer the operating rights of ACTION MOTOR EXPRESS, INC., P.O. Box 29102, New Orleans, LA 70189, under section 210a(b). The transfer to MEL MOTOR EXPRESS, INC., of the operating rights of ACTION MOTOR EXPRESS, INC., is presently pending.

MC-FC 78020. By application filed January 31, 1979, JET TRANSFER CORP., East Road, North Clarendon, VT 05759, seeks temporary authority to transfer the operating rights of RONALD A. HESS, AN INDIVIDUAL, d.b.a. EQUINOX MOTORS, Route 7, P.O. Box 414, Manchester, VT 05254, under section 210a(b). The transfer to JET TRANSFER CORP., of the operating rights of RONALD A. HESS, AN INDIVIDUAL, d.b.a. EQUINOX MOTORS, is presently pending.

MC-FC 78021. By application filed January 31, 1979, GOODWILL MOVING & STORAGE, INC., 1619 E. 95th Street, Brooklyn, NY 11236, seeks temporary authority to transfer the operating rights of A.J.N. EXPRESS SERVICE, INC., 1311 Washington Avenue, West Islip, NY 11795, under section 210a(b). The transfer to GOODWILL MOVING & STORAGE, INC., of the operating rights of A.J.N. EXPRESS SERVICE, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4836 Filed 2-13-79; 8:45 am]

[7035-01-M]

[No. 37047]

NEW ORLEANS PUBLIC BELT RAILROAD—PETITION FOR DECLARATORY ORDER—CONSTRUCTION AND MAINTENANCE OF INDUSTRIAL SPUR TRACKS

Notice Instituting Proceeding

FEBRUARY 9, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of a declaratory order proceeding.

SUMMARY: A petition was filed by the New Orleans Public Belt Railroad (Public Belt) for a declaratory order. The Board of Commissioners of the Port of New Orleans (Dock Board) answered.

The dispute concerns the extent of Public Belt's obligation, if any, to construct, maintain, replace, or relocate spur tracks exclusively serving certain facilities owned by or located on the property of the Dock Board. Public Belt argues that the involved tracks are industrial spur tracks whose repair and maintenance are the responsibility of the Dock Board and not of the Public Belt. The Dock Board argues that it does not occupy the position of a private shipper because it merely administers and provides its facilities for the use of the shipping public. It concludes that the spur tracks serving its facilities are owned and operated by Public Belt as part of the carrier's system and under its obligation to provide, repair, and maintain reasonable facilities for the furnishing of adequate transportation services to the public.

By order served concurrently with this publication, a proceeding is being instituted to resolve this controversy.

DATES: Interested parties are asked to submit a statement of intent to participate on or before March 1, 1979. Parties should indicate whether they intend to actively participate or whether they merely wish to receive copies of decisions and releases of the Commission.

Active participants shall serve copies of their statements on all parties appearing on the service list. An original and six copies of written statements must be filed with the Commission. An original and one copy of the statement of intent to participate shall also be filed.

The filing and service of statements shall be as follows: (a) opening statements within 40 days of publication of this notice, (b) reply statements 20 days thereafter. A service list will be sent to all active participants before the filing deadline to enable them to comply with the requirement for cross-service of pleadings.

ADDRESS: Statements and replies should be sent to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, or Harvey Gobetz, Section of Rates, Office of Proceedings, Washington, D.C. 20423 (202-275-7693).

Issued in Washington, D.C., January 25, 1979.

By the Commission, Division 1, Commissioners Gresham, Brown, and Clapp.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4841 Filed 2-13-79; 8:45 am]

[7035-01-M]

[Exception No. 14]

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SOUTHERN PACIFIC TRANSPORTATION COMPANY

Exception Under Section (a), Paragraph (1), Part (V), Second Revised Service Order No. 1332

FEBRUARY 19, 1979.

By the Board: Because of adverse weather conditions on the St. Louis Southwestern Railway Company (SSW) and on the Southern Pacific Transportation Company (SP), the SP and the SSW are temporarily unable to forward all cars within 60 hours as required by Section (a)(4)(i) of Second Revised Service Order No. 1332.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(v) of Second Revised Service Order No. 1332, the SSW and the SP are required to forward loaded cars or empty foreign or private cars from the points named below within 72 hours.

SSW: Pine Bluff, Arkansas, East St. Louis, Illinois.

SP: Roseville, California, Los Angeles, California, West Colton, California, El Paso, Texas, San Antonio, Texas, Houston, Texas, Eugene, Oregon.

Effective February 2, 1979.

Expires 11:59 p.m., February 15, 1979.

ROBERT S. TURKINGTON,
Acting Chairman,
Railroad Service Board.

[FR Doc. 79-4840 Filed 2-13-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552(e)(3)

CONTENTS

[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION

TIME AND DATE: 10:30 a.m. on Friday, February 16, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550-17th Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Bank of South Palm Beaches, a proposed new bank to be located at 135 Hypoluxo road, Hypoluxo, Florida, for Federal deposit insurance.

Bank of Lemont, a proposed new bank to be located at 1200 South State Road, Lemont, Illinois, for Federal deposit insurance.

Community Bank of Raymore, a proposed new bank to be located on State Highway 58, at Skyline Drive, Raymore, Missouri, for Federal deposit insurance.

South Ridge Bank, Inc., a proposed new bank to be located at 27th Street and Old Cheney Road, Lincoln, Nebraska, for Federal deposit insurance.

Application for consent to establish a branch:

The Troy Savings Bank, Troy, New York, for consent to establish a branch in the Aviation Mall, Town of Queensbury, New York.

Applications for consent to merge and establish branches:

Emigrant Savings Bank, New York (Manhattan), New York, an insured mutual savings bank, for consent to merge under its charter and title with Prudential Savings Bank, New York (Manhattan), New York, also an insured mutual savings bank, and for consent to establish the 15 offices of Prudential Savings Bank as branches of the resultant bank.

First Trust and Deposit Company, Syracuse, New York, an insured State nonmember bank, for consent to merge, under its charter and title, with Genesee Valley National Bank and Trust Company of Geneseo, Geneseo, New York, and for consent to establish the two offices of Genesee Valley Bank and Trust Company of Geneseo as branches of the resultant bank.

Requests pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Names of persons and of banks authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,712-L—Franklin National Bank, New York, New York.

Case No. 43,762-SR (Addendum)—Citizens State Bank, Carrizo Springs, Texas.

Case No. 43,773-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Case No. 43,777-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Case No. 43,788-L—The Bank of Bloomfield, Bloomfield, New Jersey.

Case No. 43,789-L—Algoma Bank, Algoma, Wisconsin.

Case No. 43,792-NR—United States National Bank, San Diego, California.

Case No. 43,794-L—Franklin National Bank, New York, New York.

Case No. 43,795-L—The Drovers' National Bank of Chicago, Chicago Illinois.

Case No. 43,796-L—Franklin National Bank, New York, New York.

Case No. 43,800-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Case No. 43,801-L—Algoma Bank Algoma, Wisconsin.

Case No. 43,802-L—Franklin National Bank, New York, New York,

Case No. 43,806-L—Franklin National Bank, New York, New York

Case No. 43,809-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Case No. 43,812-L—Franklin National Bank, New York, New York.

Memorandum re: Skyline national Bank, Denver, Colorado.

Memorandum re: Surety Bank and Trust Company, Wakefield, Massachusetts.

Memorandum re: First State Bank of Hudson County, Jersey City, New Jersey.

Memorandum re: Northern Ohio Bank, Cleveland, Ohio.

Memorandum re: Northeast Bank of Houston, Houston, Texas.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-307-79 Filed 2-12-79; 2:53 pm]

[6714-01-M]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 10:00 a.m. on Friday, February 16, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550—17th Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Request from the Board of Governors of the Federal Reserve System for a report on the competitive factors involved in the proposed consolidation of The Chartered Bank of London, San Francisco, California, with Union Bank, Los Angeles, California.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the liquidation of First State Bank of Northern California, San Leandro, California (two memorandums).

Pitney, Hardin & Kipp, Morristown, New Jersey, in connection with the liquidation of assets acquired by the Corporation from Farmers Bank of the State of Delaware, Dover, Delaware.

Powell, Goldstein, Frazer & Murphy, Atlanta, Georgia, in connection with the liquidation of First Augusta Bank & Trust Company, Augusta, Georgia.

Lemle, Kelleher, Kohlmeyer & Matthews, New Orleans, Louisiana, in connec-

tion with the liquidation of Republic National Bank of Louisiana, New Orleans, Louisiana.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Pryor, Cashman, Sherman & Flynn, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

J. Randolph Pelzer, P.A., North Charleston, South Carolina, in connection with the liquidation of American Bank & Trust, Orangeburg, South Carolina.

Wildman, Harrold, Allen, Dixon & McDonnell, Memphis, Tennessee, in connection with the liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Recommendations with respect to the amendment of Corporation rules and regulations:

Memorandum and resolution proposing the publication for comment of amendments to Part 308 of the Corporation's rules and regulations, entitled, "Rules of Practice and Procedure."

Memorandum and resolution proposing the final adoption of an amendment to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," to authorize preauthorized transfers from savings to checking or other deposit accounts of the same or another depositor.

Memorandum and resolution proposing the adoption and the publication of a Notice of Changes to existing Systems of Records and Request for Waiver of Sixty-Day Advance Notice, as required by the Privacy Act of 1974, to implement Title VI (the "Change in Bank Control Act of 1978") of the "Financial Institutions Regulatory and Interest Rate Control Act of 1978."

Memorandum proposing the acquisition of additional space for use as Division of Bank Supervision Training Center lodging facilities.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Report of the Executive Secretary regarding his transmittal of "no significant effect" competitive factor reports.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446

[S 310-79 Filed 2-12-79; 3:25 pm]

[6740-02-M]

3

FEBRUARY 12, 1979

FEDERAL ENERGY REGULATORY COMMISSION

TIME AND DATE: February 13, 1979, 10:00 a.m.

PLACE: Room 9306, 825 North Capitol St., N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Commission Meeting to Consider, Proposed Opinions on Indefinite Price, Escalator Clauses.

CONTACT PERSON FOR INFORMATION:

Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

KENNETH F. PLUMB,
Secretary.

[S-306-79 Filed 2-12-79; 10:42 am]

[7600-01-M]

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: February 22, 1979 at 1:00 p.m.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 202 634-4015.

Dated: February 8, 1979.

[S-305-79 Filed 2-12-79; 10:42 am]

[8010-01-M]

5

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 6839, February 2, 1979].

STATUS: Open Meeting, Closed Meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 30, 1979.

CHANGES IN THE MEETING: Deletion and rescheduling of items.

The following item was not considered at the open meeting on Thursday, February 8, 1979, but has been rescheduled for Thursday, February 15, 1979 at 1:30 p.m.:

Oral argument in broker-dealer proceedings on a petition by Richard O. Bertoli and Arnold L. Froelich, for review of the adverse initial decision of an Administrative Law Judge.

The following item was not considered by the Commission at the closed meeting scheduled for February 8, 1979, but has been rescheduled for Thursday, February 15, 1979, following the 1:30 p.m. open meeting:

Post oral argument discussion.

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

FEBRUARY 8, 1979.

[S-304-79 Filed 2-12-79; 9:34 am]

[8120-01-M]

6

TENNESSEE VALLEY AUTHORITY.

(Meeting No. 1210).

TIME AND DATE: 10:30 a.m., Friday, February 16, 1979.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS FOR DISCUSSION:

1. Preliminary rate review.

MATTERS FOR ACTION:

OLD BUSINESS

1. Changes in arrangements for sale of interruptible power to industrial customers.

2. Req. No. 822846—Process radiation monitoring systems for the Hartsville and Phipps Bend Nuclear Plants.

PERSONNEL ACTIONS:

NEW BUSINESS

1. Change of status for Hobart N. Stroud, Jr., from Assistant General Manager to Assistant Manager of Power, Chattanooga, Tennessee.

2. Change of status for David G. Powell from Executive Assistant to the Chairman of the Board to Executive Assistant to the General Manager.

3. Change of status for Richard G. Crawford from Acting Assistant Director of Transmission Planning and Engineering to permanent position of Assistant Director of Transmission Planning and Engineering, Office of Power, Chattanooga, Tennessee.

PURCHASE AWARDS:

1. Req. No. 824930—Insulated conductors, Type EPSJ, for Hartsville and Phipps Bend Nuclear Plants.

2. Req. No. 824711—Chimney for Johnsonville Steam Plant.

3. Amendment to contracts with Brown Boveri Corporation, North Brunswick, New Jersey, for turbogenerators for Bellefonte, Hartsville, and Phipps Bend Nuclear Plants.

4. Req. No. 47—Coal for TVA steam plants.

PROJECT AUTHORIZATIONS:

1. No. 3294.1—Amendment to provide for deletion of authorization to install additional electrostatic precipitators on Paradise Steam Plant Units 1 and 2.

2. No. 3414—Limestone wet scrubber facility for units 1-2 and balanced draft conversion for units 1-3 of the Paradise Steam Plant.

POWER ITEMS:

1. New power contract with Hickman-Fulton Counties Rural Electric Cooperative Corporation.

2. New power contract with Winchester, Tennessee.

REAL PROPERTY TRANSACTIONS:

1. Filing of condemnation suit.

2. Grant of permanent easement to Duffield Development Authority, Duffield, Virginia, for expansion of wastewater treatment facilities, affecting approximately 3.4 acres of TVA land in Scott County, Virginia—Tract XTLDFP-1WT.

3. Grant of 32-year easement to R-C Limited II for construction and leasing to TVA of the Eastern Area Radiological Laboratory, affecting approximately 17.5 acres of Tellico Reservoir land at the Niles Ferry Industrial Park, Monroe County, Tennessee—tract XTTELR-5E.

UNCLASSIFIED:

1. Settlement of claim by Commonwealth of Kentucky, Department of Transportation, against TVA for damage by TVA vehicle to Clark's River Bridge at Paducah, Kentucky.

2. Contracts with Southern Railway Company providing for temporary and permanent rail service to the Phipps Bend Nuclear Plant.

DATED: February 9, 1979.

CONTACT PERSON FOR MORE INFORMATION:

Lee C. Sheppeard, Acting Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-566-1401.

[S-303-79 Filed 2-12-79; 9:34 am]

[4410-01-M]

7

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: Wednesday, February 21, 1979 at 9:00 a.m.

PLACE: Room 814, 320 First Street, N.W., Washington, D.C.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 7 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. § 2.17 and appealed pursuant to 28 C.F.R. § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

A. Ronald Peterson, Analyst, 202-724-3094.

[S-308-79 Filed 2-12-79; 2:53 pm]

[4410-01-M]

8

UNITED STATES PAROLE COMMISSION.

TIMES AND DATES: February 21, 1979—1:30 to 5:30 p.m., February 22, 23, 1979—9 a.m. to 5:30 p.m.

PLACE: Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Accreditation of the U.S. Parole Commission.
(2) Approval of Minutes.
(3) Proposal for a National Parole Institute.
(4) Dispositional Review Procedures.
(5) Personnel Allocation.
(6) Guideline Revisions:
(a) Proposed rule changes affecting the Youth and Narcotic Addict Rehabilitation Act Guidelines.
(b) Proposed rule changes—instituting application of guidelines in effect at time of sentencing.
(c) Disputed allegations concerning Offense Behavior—proposal to publish a standard of proof as an addition to 28 C.F.R. § 2.20.
(d) Modification of time ranges, offense severity ratings, salient factor scores, and other items.
(7) Institutional Behavior:
(a) Forfeited good time.
(b) Institutional Disciplinary Committee reports.
(c) Superior program achievement—what constitutes clearly exceptional circumstances.
(8) Role of the National Appeals Board.
(9) Interagency transmittal of confidential material.
(10) Scheduling of next meeting.
(11) Ratification of the cancellation of statutory interim hearings.
(12) Ratification of a policy and procedures memo making miscellaneous changes or correcting editorial/typing errors in rules.
(13) Ratification of rewording of procedures manual section on "Visitors at Hearings".
(14) Review and discussion of any other of the Commission's policies, rules, and procedures.

CONTACT PERSON FOR MORE INFORMATION:

M. E. Malin Foehrkolb, 724-3094.

[S-309-79 Filed 2-12-79; 2:53 pm]

Federal Register

WEDNESDAY, FEBRUARY 14, 1979

PART II

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

■

STATUS OF NATIVE SPECIES PROTECTED BY THE ENDANGERED SPECIES CONVENTION

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 23]

ENDANGERED SPECIES CONVENTION

Status of Protected Native Species

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of final determinations on United States proposals to amend list of protected species.

SUMMARY: The second conference of the 47 nations that are party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (T.I.A.S. 8249) will be held on March 19-30, 1979, in Costa Rica. At this meeting, the Parties will consider proposed amendments to Appendices I and II to the Convention, which list protected species, and will consider other implementation issues. The United States has submitted proposals to amend Appendices I and II based on a survey of the status of all native United States wildlife species currently included in those appendices. These proposals were announced in the FEDERAL REGISTER on November 27, 1978 (43 FR 55314-55319). The present notice announces the Service's final determinations on these proposals for purposes of negotiation with other Parties in Costa Rica.

DATES: The final determinations will be among the topics discussed at a public meeting on March 8, 1979. Following decisions on these proposals by the Parties, the Service will publish a notice announcing any amendments to the appendices and the date when they enter into force.

ADDRESS: Please send correspondence to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240. Comments and documents concerning this notice are available for public inspection during the normal business hours of 7:45 a.m. to 4:15 p.m. in room 616, 1000 N. Glebe Road, Arlington, VA.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Convention on International Trade in Endangered Species of Wild Fauna and Flora is a treaty regulating the import, export, re-export and introduction from the sea of certain species of wildlife and plants. Each species for which such trade is controlled is included in one of three appendices according to the degree of protection it needs. The development of the appendices and the criteria for the Party nations to follow in amending them were discussed in a proposed rule issued by the Service in the March 24, 1978, FEDERAL REGISTER (43 FR 12349-12351).

Following the adoption of criteria for amending the appendices, the Parties agreed at their first meeting in November 1976 to undertake a review of previously listed species in light of the criteria. Their resolution was as follows:

> Considering further that some species or taxa of plants and animals may be incorrectly placed on the present appendices, and that there are fundamental practical problems of implementation of the present lists, the First Meeting of the Convention resolves that the appendices should be examined in their entirety, species by species, by a technical conference that could be held in the near future or by some other means.

The need for a technical conference to examine the appendices and other issues of implementing the Convention led to the Special Working Session, which was held in October 1977. This meeting did not accomplish a review of the appendices, but it did lead to a subsequent review that was coordinated by the Convention Secretariat.

After the Special Working Session, the Service initiated a survey of the status of all wildlife species native to the United States that were included in Appendix I or II. The Service took steps to include participation by the public and by state fish and wildlife agencies in this survey, recognizing that the state agencies have primary responsibility for conservation of most of the listed species. The Service requested information and published its findings in a series of FEDERAL REGISTER notices:

March 6, 1978 (43 FR 9169); May 3, 1978 (43 FR 19176), and November 27, 1978 (43 FR 55314).

Proposals to amend Appendices I and II that resulted from this survey were sent to the Convention Secretariat on October 5, 1978, in order to meet the deadline for their consideration at the Second Meeting of the Conference of the Parties. The status of these proposals and the roles of the public and of the U.S. delegation to the meeting in regard to them were described in a FEDERAL REGISTER notice published on January 16, 1979 (44 FR 3384). In that notice, the Service announced it would subsequently publish final determinations on the biological and trade status of species subject to U.S. proposals in light of the criteria for amending the appendices. The negotiating positions of the U.S. delegation will be based on these determinations, noting, however, that the process of negotiation might require a shift in certain negotiating positions.

FINAL DETERMINATIONS

The Service has considered all comments and information received by January 15, 1979, in making final determinations on United States proposals to amend Appendices I and II. These determinations are the result of compilation and examination of the evidence by the staffs of the Service and the Endangered Species Scientific Authority. In addition, the Service has prepared Environmental Impact Assessments to determine if these proposed U.S. actions would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act.

The following table shows the current appendix listing, proposed amendment and final determination for each species subject to a U.S. proposal.

FINAL DETERMINATIONS OF THE SERVICE ON PROPOSALS BY THE UNITED STATES TO AMEND THE CONVENTION APPENDICES

Species	Current listing	Proposal to parties	Final determination [1]
Mexican duck	App. I	Delete from App. I	Delete from App. I.
Marsh hawk	App. II	Delete from App. II	Delete from App. II.
Trumpeter swan	App. II [2]	Delete from App. II	Retain in App. II.
Mearn's quail	App. II	Delete from App. II	Delete from App. II.
Sparrow hawk	App. II	Delete from App. II	Delete from App. II.
Bobcat	App. II	Delete from App. II	Retain in App. II.
Osprey	App. II	Delete U.S. pop. from App. II	Delete U.S. pop. from App. II.
Greater prairie chicken	App. II	Delete from App. II	Delete from App. II.
Atlantic sturgeon	App. I	Transfer to App. II	Transfer to App. II.
American alligator	App. I	Transfer to App. II	Transfer to App. II [3]
Southern sea otter	App. I	Transfer to App. II	Retain in App. I.
Peale's peregrine	App. I	Transfer to App. II	Transfer to App. II [3]
Bald eagle	App. I	Transfer Alaska pop. to App. II	Transfer Alaska pop. to App. II.

FINAL DETERMINATIONS OF THE SERVICE ON PROPOSALS BY THE UNITED STATES TO AMEND THE CONVENTION APPENDICES—Continued

Species	Current listing	Proposal to parties	Final determination[1]
Northern elephant seal	App. I	Transfer to App. II	Transfer to App. II.
Golden eagle	App. II	Transfer eastern U.S. pop. to App. I	Transfer eastern U.S. pop. to App. I.
Guadalupe fur seal	App. II	Transfer to App. I	Transfer to App. I.
American crocodile	App. II	Transfer U.S. pop. to App. I	Transfer U.S. pop. to App. I
Bolson tortoise	App. II	Transfer to App. I	Transfer to App. I.
Goshawk	App. II	App. II for control of other species	Retain as is on App. II.
Golden eagle	App. II	List western U.S. pop. in App. II for control of other species.	List western U.S. pop. in App. II for control of other species.
Gray wolf	App. II	List Alaska pop. in App. II for control of other species.	List Alaska pop. in App. II for control of other species.
Puma	App. II	List U.S. and Canada pop. in App. II for control of other species.	List U.S. and Canada pop. in App. II for control of other species.
Bighorn sheep	App. II	List U.S. and Canada pop. in App. II for control of other species.	List U.S. pop. in App. II for control of other species.
Grizzly and brown bears	App. II	List Alaska and Canada pop. in App. II for control of other species.	List Alaska and Canada pop. in App. II for control of other species.

[1] Final decisions on amendments to Appendices I and II are made by agreement of the Party nations.
[2] The trumpeter swan was omitted from App. II in the authentic text of the Convention, apparently by clerical error.
[3] At request of ESSA, the Service will propose to the Parties that these species be included in App. II both because of the potential threat of extinction and because of the need to control trade in other listed species.

The basis for the Service's final determination on each species is discussed below, noting that a summary of the information on biological and trade status that led to the proposed amendments was published in the FEDERAL REGISTER on November 27, 1978. The present notice therefore focuses on comments and information received subsequent to publication of the proposed amendments on November 27, 1978.

1. Mexican duck (*Anas platyrhynchos diazi*). No additional data have been received concerning this species beyond that considered in making the proposal. The Defenders of Wildlife, in a letter to the Service dated January 15, 1979, stated that Mexico "has traditionally wanted the Mexican duck on Appendix I" and that it is "completely inappropriate for the U.S., to propose any change in the status of the Mexican duck under CITES, except upon request from Mexico." Defenders also stated that Mexico has expressed its opposition to the U.S. position and has recommended the Mexican duck for Appendix II.

The Service had requested information from the government of Mexico and from all other national governments through the Department of State in March, 1978. A response was received from the Secretary of Agriculture and Hydraulic Resources of Mexico, suggesting that the Mexican duck belongs in Appendix II but offering no supporting reasons or information. This suggestion was considered along with all other comments. In that the Mexican suggestion was made prior to development of a U.S. position, it was not made as an expression of opposition to the U.S. position as claimed by Defenders. The Service recognizes the importance of national views, especially as they concern species native to that nation. However, such views must be considered in the context of other information rather than to the exclusion of such information. Accordingly, the Service has determined to support the proposal to delete the Mexican duck from Appendix I on the basis of recent surveys that show substantial populations with no evidence of potential threat to their survival because of trade.

Marsh hawk or northern harrier (*Circus cyaneus*). The Service received only one substantial comment on its proposal to delete this species from Appendix II, other than general statements of support or requests to withdraw all proposals. The Office of Migratory Bird Management in the Service reported that this is a common species within its range and that available data indicate a stable population between the years 1967 and 1974. The Office also noted that only one of 2,131 raptors marked by Federal markers for birds held in captivity was a harrier. They reported no significant falconry, commercial or trade interest in it. The Endangered Species Scientific Authority recommended that the harrier be deleted from Appendix II or annotated in Appendix II for purposes of controlling trade in other populations if there is opposition from other nations to its deletion.

The Service has concluded from these comments and from previously available information to support the proposal to delete the marsh hawk (or northern harrier) from Appendix II because of its stable population status and the absence of any significant trade.

3. Trumpeter swan (*Cygnus buccinator*). The decision on whether or not to delete this species from Appendix II was difficult. The swan's populations have increased from very low numbers to the point where habitat appears to be a limiting factor for the interior population of slightly under 1,000 birds, while the Alaska population (4,170 birds in the summer of 1975) is still expanding. Despite these increases, the total population is only about 5,000 individuals. The Endangered Species Scientific Authority, in a letter to the Director dated January 4, 1979, requested that this species be retained in Appendix II because "the population is still quite small, and trade in feathers was the primary cause of its original depletion." They add that "The species is closely protected by other laws, but as for the sea otter, these laws are more restricted in scope than the Convention." The Trumpeter Swan Society, in a January 12, 1979, letter, stated that deletion of the species from Appendix II "conceivably could allow international trade that would be contrary to the integrity and viability of the species * * *" They concluded that "considering the possible existence of two subspecies of

trumpeter swans, the critical winter habitat of the interior population of the trumpeter swan, and the decreasing viability of the Yellowstone-area trumpeters, the Trumpeter Swan Society recommends that the U.S. Fish and Wildlife Service remove any consideration of deleting the trumpeter swan from Appendix II * * *"

Although deletion of the trumpeter swan from Appendix II would have no demonstrable impact on its continued survival, the Service has determined that the status of the two populations is not now sufficiently secure to merit the removal of Appendix II trade controls under the criteria adopted by the Parties for deletion of species from the appendices. Therefore, the Service has determined to retain this species in Appendix II, and it will seek correction of the error that eliminated the species from Appendix II to the authentic text of the Convention in 1973.

4. Mearn's quail (*Cyrtonyx montezumae mearnsi*). The Service has received no additional information or any adverse comments on the proposal to delete this subspecies from Appendix II, which is supported by the Endangered Species Scientific Authority and the wildlife agencies of states in which Mearn's quail occurs. In view of the questionable basis for the original listing of this subspecies, the absence of significant international trade and the occurrence of populations large enough to support legal hunting in New Mexico and Arizona, the Service has determined to support the proposal deleting Mearn's quail from Appendix II.

5. Sparrow hawk or kestrel (*Falco sparverius*). The Service proposed to delete this species from Appendix II. The only additional information on this species subsequent to the notice of November 27, 1978, came from the Service's Office of Migratory Bird Management, which reported that the estimate of a population exceeding 300,000 was based on the 1974 Christmas Count, and that the estimate is undoubtedly conservative. Although this species is used in falconry, it is used mainly by persons entering the sport. Only 3.4% of the 2,131 raptors held in captivity and identified by Federal markers were of this species. Considering the large populations of the kestrel and the negligible impact of international trade, the Service has determined to support the proposal to delete it from Appendix II.

6. Bobcat (*Lynx rufus*). The Service's proposal to delete the bobcat from Appendix II was based on a large body of information assembled by the Service and the Endangered Species Scientific Authority (ESSA). It was reexamined in light of criticism comments and detailed analysis of the available data from the ESSA, the Council on Environmental Quality, Defenders of Wildlife, other non-governmental organizations, and numerous individual citizens, and in light of support for the proposal by many state wildlife agencies that have the primary responsibility for conserving bobcat populations, and by the National Wildlife Federation.

Despite all of the controversy generated by this proposal, very few additional data on bobcats have been presented during the comment period. It is still an open question as to whether or not the bobcat may become threatened with extinction unless international trade in it is subject to strict regulation (which is a basic requirement for including a species in Appendix II). There is some question as to whether the bobcat would qualify for inclusion if it were not already listed. Such questions are beside the point at this time, however, because the Service is conducting the present survey in terms of criteria for addition and deletion adopted by the Parties. The criteria for deletion require "positive scientific evidence that the species can withstand the exploitation resulting from the removal of protection afforded by the present listing."

Further, "such evidence should include at least a well-documented population survey, an indication of the population trend of the species, showing recovery sufficient to justify deletion or transfer, and an analysis of the potential for commercial trade in the species." Reconsideration of all presently available information by the Service indicates that the criteria for deletion are not met. The criteria, being guidelines, leave considerable room for interpretation. However, the Service believes that these data are insufficient, even allowing a generous interpretation. Accordingly, the Service has determined that the available data on bobcat do not satisfy the criteria for deletion of species from Appendix II. However, because of pending litigation in the states of Louisiana and Wisconsin, the Service may be presently precluded from withdrawing the proposal to delete bobcat from Appendix II at this time. Once there has been a resolution of these court cases, the Service intends to take appropriate action to withdraw the bobcat proposal.

It has been proposed by both the Service and the Endangered Species Scientific Authority that the Party nations adopt special criteria for transfer or deletion of previously listed species. Until the Fourth Meeting of the Conference of the Parties (expected to be held in 1983), these criteria would provide for transfer or deletion of species if a review of available data indicated that the presently existing criteria for addition are not met. If such proposal and special criteria are adopted, the Service will reconsider the appropriateness of including the bobcat and other species in the appendices.

7. Osprey (*Pandion haliaetus*). The Service has received general comments from several state wildlife agencies and the National Wildlife Federation supporting the proposal to delete the osprey from Appendix II. The only other organization to comment on the proposal during the comment period was the Defenders of Wildlife, which had no objection to it. Considering that there is no significant international trade in the species or potential for such trade, the Service has determined to support the proposal that the osprey be deleted from Appendix II.

8. Greater prairie chicken (*Tympanuchus cupido pinnatus*). The Service has received no additional information on this subspecies beyond that considered in the FEDERAL REGISTER notice of November 27, 1978. Several state wildlife agencies and the national Wildlife Federation endorsed the proposal and the Defenders of Wildlife did not object to it. In view of the large populations that support sport hunting and the absence of significant international trade, the Service has determined to support the proposal to delete this subspecies from Appendix II.

9. Atlantic sturgeon (*Acipenser oxyrhnchus*). The Service's proposal to transfer the Atlantic sturgeon from Appendix I to Appendix II was based primarily on a recommendation from the Endangered Species Scientific Authority, which noted that although this species experienced a general population decline in the 19th century, it is still widespread and abundant in some areas. Two such areas are the St. John River in New Brunswick and the Hudson River in New York. Significant trade in this species in the past contributed to its decline. A recovery of the populations could lead to further trade, which justifies the maintenance of protection under the Convention. Therefore, the Service has determined to support the proposal to transfer the Atlantic sturgeon to Appendix II.

10. American alligator (*Alligator mississippiensis*). The proposal to transfer this species from Appendix I to Appendix II has generated much controversy. The proposal is strongly supported by the state wildlife agencies of Louisiana and Florida. These states have supplies extensive information on the alligator, both prior to and during the comment period for the FEDERAL REGISTER notice of November 27, 1978. The Secretary of the Louisiana Wildlife and Fisheries Commission, in a letter to the Director dated January 4, 1979, emphasized that "the Federal government should

monitor exports, and work closely with affected states in developing alligator management programs, particularly in regards to harvest." He adds that "We view the amazing recovery of the alligator as a complex issue, involving state and federal management programs; concerned citizens, particularly landowners; legislative and judicial cooperation; all in conjunction with a strong enforcement effort."

The Executive Director of the Florida Game and Fresh Water Fish Commission, in a letter to the Director dated January 15, 1979, pointed out various shortcomings in the Service's proposal. The Service acknowledges receipt of additional information supporting transfer of the alligator to Appendix II that would have been approriate to include in the proposal, and will seek to introduce it for consideration by the Party nations.

Objections to the proposal were raised by Monitor, Inc., the Environmental Defense Fund, Defenders of Wildlife and the Natural Resources Defense Council, Inc. The objections by these organizations were essentially as follows:

(1) The species, or at least populations in some areas, are still endangered, due in part to loss of habitat;

(2) transfer of the alligator to Appendix II will reopen commercial trade that would encourage illegal killing and smuggling of alligators, which is difficult to enforce against;

(3) if legal commercial trade is reopened, non-Party nations and any nations that have entered a reservation on the species will not help insure that only legally exported alligators are allowed in trade;

(4) trade in alligators would be detrimental to other species of crocodilians because of similarity in appearance;

(5) it will be impossible to determine if U.S. imports of alligator products fabricated in other nations consist of legally or illegally exported specimens.

With regard to the issue of endangered populations, it should be noted that the species as an entity is not presently threatened with extinction. Listing in Appendix II does not eliminate the possibility of restricting legal exports to only those populations that can sustain a harvest. The Endangered Species Scientific Authority (ESSA) must advise that export will not be detrimental to the survival of the species. Such findings can be made at the population level. This provides the flexibility needed to address problems raised by local or regional variations in alligator abundance and to address the issue of marketing products of alligators that were legally harvested.

Concerning the second point, it is not clear if reopening legal trade in alligators will encourage or discourage illegal killing and smuggling. It can be argued that trade will flow through a legal outlet if one is provided. An overseas market already exists, and transfer of the alligator to Appendix II would not necessarily expand that market to make alligator smuggling more profitable. Enforcement of export controls is obviously difficult, considering the manpower limitations of the Service and other concerned state and federal agencies, but enforcement can be as effective in dealing with a controlled commercial export as it is in dealing with a total ban on commercial export.

The third point, that certain other nations will not assist the U.S. in insuring that only legally exported alligators enter trade, leads to the conclusion that primary reliance must be on U.S. export controls. However, non-Parties and Parties with reservations would not offer much help even if the species were kept in Appendix I. This is clear from the demonstrated existence of a foreign market for smuggled alligator hides. The only effective weapon against such illegal trade is the imposition of controls by the U.S. and other Parties on any subsequent reexport trade. Such controls can be imposed for Appendix II about as well as for Appendix I.

The fourth point about problems of controlling trade in other crocodilians is probably the most significant one. Identification of alligator hides and fabricated products as to species will be necessary to reduce the threat to other species. Otherwise, hides and products of those species might enter commercial trade as "alligator" specimens. In response to this issue, the Endangered Species Scientific Authority, with endorsement from the Council on Environmental Quality, has requested the Service to propose that the alligator be listed in Appendix II "expressly both because [it] may become threatened with extinction unless trade is regulated and because trade in [it] must be regulated to control trade in other species." The significance of this request is that if it is adopted, the ESSA will base its finding about detriment to the survival of the species on both the alligator and other species that could be harmed by alligator trade.

The fifth point about limiting imports of previously exported alligator products to legally exported specimens hinges on the development of a reliable method of marking such specimens in a way that shows up in the finished product. Besides marking, two alternatives that have been suggested are to confine commercial trade in alligators to the U.S. or to allow only export of finished products. In any case, imports of alligator products would not be allowed by the Service unless there were means of demonstrating their legal origin.

In conclusion, the Service has determined to support the proposal to transfer the alligator from Appendix I to Appendix II, and to seek agreement by the Parties that it be included in Appendix II both because it may become threatened with extinction unless trade is regulated and because trade in it must be regulated in order to effectively control trade in other listed species.

11. Southern sea otter (*Enhydra lutris nereis*). The Service's proposal to transfer this subspecies from Appendix I to Appendix II was based on evidence that it was not presently threatened with extinction, the basic requirement for inclusion in Appendix I. This proposal, while supported by a number of state wildlife agencies and the National Wildlife Federation, was opposed by the Friends of the Sea Otter, The Defenders of Wildlife, the Environmental Defense Fund and the Otter Specialist Group of the I.U.C.N. Survival Service Commission. The points raised in these objections were summarized in a letter dated January 4, 1979, from the Endangered Species Scientific Authority to the Director:

> The Southern sea otter has recovered from virtual extinction to a population estimated at somewhat less than 2000 individuals. Although this recovery is encouraging, the population is still extremely small, is in competition with abalone fishery in California, and is vulnerable to oil pollution. In addition, the animal's pelt is very valuable, having led to its original decimation. Perhaps the strongest argument in support of the Management Authority proposal is that the sea otter is thoroughly protected by other laws: particularly, the Marine Mammal Protection Act, the Endangered Species Act, and California State law. However, the Convention is the only global international agreement affording protection to this species, and because potential trade in the species has global dimensions that protection should not be lessened on the basis of more parochial laws.

Subsequent discussions between the ESSA staff and the Service involved a weighing of the biological status of the sea otter, including evidence of recovery, protection under federal and State laws, and threats from oil spills and fishermen, against the potential trade that could affect the species. The result of this weighing was that the evidence did not clearly show whether the species belongs in Appendix I or Appendix II. However, considering that the criteria adopted by the Parties for transfer or deletion state that if the Conference of the Parties errs, it should be toward protection of the resource, the Service has determined to retain the southern sea otter in Appendix I.

12. Peale's peregrine (*Falco peregrinus pealei*). The Service's proposal to transfer this subspecies of the per-

egrine falcon from Appendix I to Appendix II was based on scientific evidence that it was not currently threatened with extinction. To a large extent, this is because Peale's peregrine has experienced no significant eggshell thinning due to pesticide contamination.

Objections to the proposal were raised by the Defenders of Wildlife, the Environmental Defense Fund, Monitor, Inc., the Natural Resources Defense Council, Inc., and the Animal Welfare Institute. The issues raised in their objections are:

(1) transferring Peale's peregrine to Appendix II creates an enforcement problem because of its similarity in appearance to other subspecies in Appendix I;

(2) the proposed transfer would stimulate demand for the species in commercial trade and affect attitudes of foreign nations as they concern protecting peregrines;

(3) There is no evidence that populations of Peale's peregrine can support commercial trade, and the potential effects of such trade should be analyzed.

As explained in the discussion of the alligator proposal, there are ways to reduce the enforcement problem caused by similarity of appearance to other subspecies or species. Marking requirements for any peregrines presented for export from the U.S. will help, in connection with a requirement for documentary evidence of the specimen's identity and legal acquisition by the exporter. The Convention provides for listing species in Appendix II rather than in Appendix I when their trade must be regulated in order to control trade in other listed species. The Endangered Species Scientific Authority, with endorsement from the council on Environmental Quality, has requested the Service to propose that Peale's peregrine be listed in Appendix II both because it may become threatened with extinction unless trade is regulated and because trade in it must be regulated to effectively control trade in other species (in this case, other peregrine subspecies). Such listing would entail dual findings of nondetriment, as described above for the alligator.

The argument that the proposed transfer of Peale's peregrine would stimulate demand for the species and affect attitudes of foreign nations about protecting peregrines does not take certain factors into account. The desirability for this species in falconry is already high and it is countered by strict Federal and state controls. Also, the attitudes of foreign authorities about peregrine protection are based on information they have on the biological status and conservation measures applied to the species, as well as knowledge of its Convention appendix status. The Service advocates wildlife conservation based on the best available scientific evidence, both in the U.S. and abroad, and would expect the appendix listing to be viewed in light of such evidence by other authorities.

The proposed transfer of Peale's peregrine to Appendix II would not result in a lessening of other Federal and state controls. In Appendix II, as in Appendix I, exports may only be allowed if they are found not to be detrimental to the survival of the species. It should be noted that the number of peregrines legally exported is very low and does not represent a significant fraction of the population. Domestic use within the U.S., which is greater than use for export, is also strictly regulated. Therefore, the potential for commercial trade that might result from the transfer of Peale's peregrine to Appendix II is limited and does not appear to present a problem for the conservation of this subspecies.

Accordingly, the Service has determined to support the proposal to transfer Peale's peregrine from Appendix I to Appendix II, and to seek agreement by the Parties that it be included in Appendix II both because it may become threatened with extinction unless trade is regulated and because trade in it must be regulated in order to effectively control trade in other species.

13. Bald eagle (*Haliaeetus leucocephalus*). The Service has proposed to transfer the Alaskan and Canadian populations of this species from Appendix I to Appendix II in recognition of their biological status, which is not presently threatened with extinction, and the potential for international trade in their plumage. Support for this proposal has been expressed by the state wildlife agencies of Alaska, Alabama, Minnesota, Missouri, New Mexico, Pennsylvania and Wisconsin, and by the National Wildlife Federation. The only comments critical of the proposal were received from the Defenders of Wildlife, which argued that the population information was inadequate to justify the transfer from Appendix I to Appendix II in terms of the criteria adopted by the Parties, and that if Canada were to allow commercial trade it would likely to significantly impact U.S. populations.

With regard to population data, recent surveys of the eagles in Alaska indicate a population between 35,000 and 50,000. The most thorough and reliable of these surveys have been conducted in southeastern Alaska, the area where eagles are most abundant. Approximately 7,500 pairs of eagles breed in Alaska. There has been no nationwide scientific survey of bald eagles in Canada, but the available studies indicate a total Canadian population of around 46,000 birds. It is clear from these figures, and from the absence of any indication of a decline in numbers, that these populations are not presently threatened with extinction. The population in the 48 conterminous United States, presently remaining in Appendix I, did decline between the 1940's and the mid- to late 1960's. Since then, numbers of eagles have stabilized or increased within their important ranges according to the Service's Office of Migratory Bird Management. In 1976-77, there were 1,067 known active nests south of Canada.

The possibility that Canada would allow commercial trade in bald eagles if they were transferred to Appendix II is very remote. In Canada, control of activities involving eagles and other raptors is accomplished by the Provinces, and there is no history of their allowing commercial exploitation of bald eagles. This does not seem to be a topic for serious concern.

The Service, therefore, has determined to support the proposal to transfer the Alaskan and Canadian populations of the bald eagle from Appendix I to Appendix II.

14. Northern elephant seal (*Mirounga angustirostris*). The Service received no information related to its proposal to transfer this species from Appendix I to Appendix II during the comment period following publication fo the FEDERAL REGISTER notice on November 27, 1978. Several state wildlife agencies and the National Wildlife Federation expressed general support for the proposal, which was developed in accordance with a recommendation made on August 7, 1978, by the Endangerd Species Scientific Authority. Because the northern elephant seal is still recovering from previous depletion and because there is some potential for trade, the Service has determined to support the proposal to transfer this species to Appendix II.

15. Golden eagle (*Aquila chrysaetos*). The Service proposed to transfer the population of this species in the United States east of the Mississippi River from Appendix II to Appendix I, based on its extremely low abundance. The Service's Office of Migratory Bird Management reported that this population is "undoubtedly less than 10 breeding pairs," and that no breeding pairs were known in 1978. This proposal was supported by the Defenders of Wildlife, Environmental defense Fund and National Wildlife Federation, in addition to the state wildlife agencies of Missouri, New Mexico, Pennsylvania, Tennessee and Wisconsin. The Alabama Department of Conservation and Natural Resources, in a letter to the Director dated December 18, 1978, reported: "as a point of interest, the

wintering population has always been low in Alabama but observation records of this species do not indicate a declining population in this state."

Opposition to the proposal was expressed by the Texas Parks and Wildlife Department, in a letter to the Director dated January 19, 1979. Their objection was that the determination that a species or population occurring in the United States is threatened with extinction should only be made under the authority of the Endangered Species Act of 1973. Further, they suggest that based on current information and on the existence of other controls, consideration should be given to deleting the U.S. population from the appendices entirely.

The Service has weighed the biological status of this species, including the effect of other existing forms of legal protection, against the potential impact of trade. It is apparent that the trade potential is small, but also that any trade could be detrimental to the eastern population of the golden eagle. There are questions about whether or not this population is distinct from the western one.

In the Service's view, it is generally best to list all populations of a particular species in need of protection on a single appendix unless subspecies or geographically distinct populations of that species clearly require different treatment. This view is based on a consideration of the enforcement difficulties and of the problems involved in determining if a population or subspecies is a vaild entity deserving separate treatment. Considering that every species varies in abundance over its range of geographic distribution, it would be inappropriate and very complicated to separately list populations at the center or at the periphery of the range unless it can be demonstrated that they are distinct subspecies or geographically distinct populations, and that their listings should be different under the terms of the Convention. In the present case, the Service believes the eastern population of the golden eagle merits separate treatment.

With regard to the argument that the determination of threatened status for U.S. species should be made only under the Endangered Species Act, it should be recognized that the terms for listing species in appendices to the Convention do not correspond directly with those for listing species as Endangered or Threatened under the Act. The same information on the biological status of a species that leads to listing the species under one of these controls might lead to listing it under the other control, but there is no requirement that listings under the Act precede those under the Convention. The significant concern here is the procedure for listing rather than the Act-Convention sequence of listing. The Service has taken steps, as discussed in the FEDERAL REGISTER notice of January 16, 1979 (44 FR 3384-3385), to provide for full public and state involvement in developing U.S. proposals to amend the Convention appendices. These steps should help alleviate the concerns of the Texas Parks and Wildlife Department and other organizations.

16. Guadalupe fur seal (*Arctocephalus townsendi*). The Service's proposal to transfer the Guadalupe fur seal from Appendix II to Appendix I received support from several state wildlife agencies, the Defenders of Wildlife, the Environmental Defense Fund, and the National Wildlife Federation. The latter organization did not support the immediate deletion of a species from the appendices because of apparent extinction, citing the example of this species as one that has been twice considered extinct. No additional information has been received on this sepcies beyond that considered in developing the proposal. Because of the small, localized population of this species and the potential for trade in it, the Service has determined to support the proposal to transfer it to Appendix I.

17. American crocodile (*Crocodylus acutus*). As with the preceding species, the Service has received several expressions of support but no additional information with regard to its proposal to transfer the United States population of the American crocodile from Appendix II to Appendix I. The Service has determined to support this proposal in view of the very small size of this population and the high potential for trade in this and other crocodilians.

18. Bolson tortoise (*Gopherus flavomarginatus*). The Service's proposal to transfer this species from Appendix II to Appendix I was based on a recent study indicating that it was threatened with extinction, primarily because of predation by man. Support for the proposal was expressed by the Defenders of Wildlife, the Envionmental Defense Fund, the National Wildlife Federation, and the state wildlife agencies of Alabama, Missouri, New Mexico, Pennsylvania and Wisconsin. Considering that no additional comments or information have been received on this proposal, the Service has determined to support it.

19. Goshawk (*Accipiter gentilis*). The Service's proposal to annotate United States populations of this species in Appendix II was based on evidence that although populations were small relative to those or other raptors, the were healthy, and that the potential for international trade did not appear to present a serious threat to their survival. Annotation in this case would serve to indicate that the species is included in Appendix II to effectively control trade in other listed species, among them other populations of the goshawk. The Endangered Species Scientific Authority (ESSA) has proposed that when a species is so annotated, their finding on whether or not the export would be detrimental to the survival of the species would be directed at the effects of such trade on the survival of other species it is listed to protect. If the Party nations adopt this proposal, it would mean that exports of goshawks from the U.S. would not be limited by ESSA on the basis of detriment to U.S. populations of goshawks. ESSA, in a letter to the Director dated January 4, 1979, that was endorsed by the Council on Environmental Quality, stated:

> We also believe that the goshawk outside of Alaska, should be retained without annotation indicating that it is included for similarity of appearance to other species. . . . The goshawk is the rarest raptor in the conterminous 48 United States, after the Peregrine. It is sought for falconry, and it is in demand internationally. Although use of the species for falconry appears to have little impact on the species across its entire range, there may be overexploitation locally. The species is not currently threatened with extinction, but regulation of trade may be significant in preventing loss from areas that are easily accessible. Consequently, retention in Appendix II without annotation is appropriate for the population outside of the conterminous 48 United States (sic). Annotation of the Alaska population, however, appears to be appropriate.

Support for the Service's proposal came from the state wildlife agencies of Missouri, New Mexico, Pennsylvania and Wisconsin, and from the National Wildlife Federation. Kentucky indicated a preference that the goshawk be deleted from Appendix II, but otherwise supported the proposed annotation.

The proposal was opposed by the Defenders of Wildlife on the grounds that it did not contain a description of ESSA's procedures for making their findings or the Service's proposed regulations for insuring that such findings are properly carried out. Defenders of Wildlife also argued that the annotation of a species "makes smuggling and illegal trade in the similar-appearing listed species all the more possible." In response to these criticisms, it should be noted that the type of finding described above for annotated species is still at the proposed stage and awaits approval by the Conference of the Parties. Consequently, issuance of proposed regulations would be premature. The procedures adopted by the Service to insure compliance with ESSA's findings for export of any particular species are not necessarily appropriate subjects for Federal regulations, especially when such findings are made in rela-

tion to individual permit applications. Further, if a species is in Appendix II, all international trade requires permits and is subject to the same legal controls whether it is annotated or not. Annotation of a species, therefore, would not make smuggling or illegal trade in other listed species more possible. It is intended to make these activities less possible.

The Service's Office of Migratory Bird Management supplied the following information:

> The 1974 winter estimate of 3,400 birds must be considered very conservative and not very realistic. All species of *Accipiter* are very secretive and are rarely observed in proportion to their actual numbers. A record number of goshawks were observed at one site near Duluth, Minnesota during the fall of 1972 when 5,382 were counted during 432 hours. While this is not a representative count, it does indicate that a U.S. winter population of 3,400 is not reasonable.
>
> Of the 2,131 raptors held in captivity and identified with Federal markers, 188 (8.8%) were goshawks. This represented an annual take from the wild of about 75 per year. In consideration of the above item, well less than 2.2% of the U.S. goshawk population is taken annually by falconers.

Weighing the biological status of this species against the potential impact of trade, there is a strong indication that the U.S. population as an entity is not currently or potentially threatened by trade. Other long-standing forms of Federal, state and local protection help to control trade. However, considering that local overexploitation could occur and that the populations in the U.S., including Alaska, are not well-censused, the Service has determined to retain the U.S. population of the goshawk in Appendix II without annotation at this time.

20. Golden eagle (*Aquila chrysaetos*). In addition to proposing that the eastern U.S. population of this species be transferred to Appendix I, the Service proposed that the western U.S. population be annotated to indicate it is listed to effectively control trade in other species.

The Service's Office of Migratory Bird Management commented that the "western" population can be best described as stable, with little information suggesting any increase. They also reported that the Service has not authorized the killing of any golden eagle for predator control or other purposes since about 1969. Currently, golden eagles may not be taken for falconry in the U.S., but a small, undetermined number might be taken by Indians for ceremonial purposes.

State wildlife agencies of Alabama, Missouri, Pennsylvania and Wisconsin, the National Wildlife Federation and the Environmental Defense Fund supported this proposal. The Texas Parks and Wildlife Department suggested, as discussed earlier, that consideration should be given to deleting the United States' population of the golden eagle from the appendices entirely.

Defenders of Wildlife objected to the proposal, but only on the same procedural grounds discussed in relation to the goshawk.

The Service has determined to support the proposal for annotating the U.S. population of the golden eagle west of the Mississippi River on the basis of similarly in appearance to other populations of this species and in recognition of the absence of any potential for a significant trade threat to the western U.S. population.

21. Gray wolf (*Canis lupus*). A clerical error in the proposal led to inclusion of both Alaskan and Canadian species in the FEDERAL REGISTER notice of November 27, 1978. The Service's intention was to propose annotation of only the Alaskan population to indicate it is listed to effectively control trade in other species.

Support for the proposal, as reported in the notice of November 27, 1978, was expressed by state wildlife agencies of Alabama, Missouri, Pennsylvania and Wisconsin, and the National Wildlife Federation. The Endangered Species Scientific Authority, in a letter to the Director dated January 4, 1979, which was supported by the Council on Environmental Quality, stated: "We have previously reviewed the documentation for the Alaska population of *Canis lupus*, because of export applications, and agree that the biological, trade, and management data support such a change for that population under the Berne criteria."

The Minnesota Department of Natural Resources commented that there are at least 1200 to 1500 gray wolves in Minnesota alone, and that because of its secure status, the species should be removed from Appendix II.

The Alaska Department of Fish and Game viewed the proposed annotation as "an improvement over the former listing but still an unnecessary burden upon the states and their citizens."

Objections to the proposal were received from the Defenders of Wildlife and the Natural Resources Defense Council, Inc. (NRDC). The Defenders of Wildlife objected on the procedural grounds discussed in relation to the goshawk proposal, and also objected to ESSA's recommendation because "several management problems which may adversely affect the species" previously noted in a finding by ESSA in relation to exports are not remedied.

The NRDC commented extensively on Alaska's state management program and cited "Alaska's record of serious mismanagement of its wildlife, particularly its wolves . . ." NRDC stated that:

> A review of available literature shows that the State has not exercised the necessary care in managing its wolves. Instead, Alaska has so mismanaged the wolf's prey species as virtually to necessitate implementation of control programs. Further, these control programs themselves have been poorly justified and planned and carelessly implemented. As the State is still reluctant to curb human hunting of ungulates in response to environmental factors, "crises" will continue to arise. The resulting frequent imposition of wolf control measures poses a serious threat to the health of that species in Alaska.

In addition, the NRDC cited the potential for an increase in the international trade value of wolf pelts and the decline in available habitat for prey species as further reasons for not annotating the gray wolf population in Alaska.

The Service has considered all of the above factors in determining if the Alaskan wolf population requires Appendix II listing because it may become threatened with extinction unless international trade is strictly regulated. The apparent problems with Alaska's wildlife management program cited by the NRDC, in the Service's view, do not pose a serious threat to the health of the wolf population. Current information on the biological status and management of the Alaskan gray wolf indicate that international trade in its pelts does not require control of this population for its own sake under the Convention. The ESSA recommendation must be viewed in light of that body's earlier finding that export of any gray wolves legally taken in Alaska prior to July 1, 1979, will not be detrimental to the survival of the species. The ESSA considered that the problems which may affect the species would need close monitoring, but decided that the positive steps by Alaska to manage wolves warranted a finding of non-detriment for export of wolves taken under the state's management program. The Service agrees with the ESSA that the biological, trade and management data support annotation, and therefore has determined to support the proposal to that effect.

22. Puma or cougar (*Felis concolor*). The Service proposed that the United States and Canadian populations of this species, except for the subspecies presently in Appendix I, be annotated to indicate they are listed to effectively control trade in other listed species.

Support for the proposal was expressed by the state wildlife agencies of Alabama, Missouri, Pennsylvania and Wisconsin, and by the National Wildlife Federation. The New Mexico Department of Game and Fish suggested that legally harvested specimens of pumas be exempted from any listing (New Mexico's comments on this species were based on the misunderstanding that the Service was proposing to transfer this species and the

bighorn sheep from Appendix II to Appendix I).

Opposition to the proposal came from the Defenders of Wildlife, who based their criticism on the procedural grounds discussed above in relation to the goshawk and asserted that the data on puma populations in the U.S. and Canada were inadequate to support the proposal.

It should be recognized that the puma is a secretive animal that is difficult to census. Population data may be less accurate than for some other species but they are sufficient to indicate substantial numbers of individuals over a wide range of geographic distribution. In addition, taking of pumas is controlled by the various state governments. There is no significant commercial exploitation of this species. Weighing the biological status of the puma, including the effects of state management, against the potential for international trade, it is evident that the species is appropriately included in Appendix II only to effectively control trade in other species (including the subspecies of *Felis concolor* now in Appendix I). The Service, therefore, has determined to support the proposal to annotate this species.

23. Bighorn sheep (*Ovis canadensis*). The Service proposed that the U.S. and Canadian populations of the bighorn be annotated to indicate they are included in Appendix II to effectively control trade in other listed species. This was based on evidence of substantial populations subject to strict management and little international trade.

This proposal was supported by the state wildlife agencies of Alabama, Missouri, Pennsylvania and Wisconsin, and by the National Wildlife Federation. The New Mexico Department of Game and Fish requested that the bighorn be kept on Appendix II, based on their misunderstanding that the Service was proposing transfer of the species to Appendix I.

The ESSA, in their letter to the Director dated January 4, 1979, supported the proposal to annotate the U.S. population, but noted that the information on the Canadian population included in the proposal was insufficient to merit annotation. This ESSA comment was endorsed by the Council on Environmental Quality. Subsequent review of the available information on Canadian bighorns by the staffs of ESSA and the Service led to a finding that such data on the Canadian population were inadequate.

The Defenders of Wildlife objected to the proposal on the procedural grounds discussed above in relation to the goshawk, but had no substantive comments on the bighorn.

Accordingly, the Service has determined to support the proposal to annotate the United States population of the bighorn to indicate it is included to effectively control trade in other listed species, but to retain the Canadian (and Mexican) populations in Appendix II without annotation.

24. Grizzly and brown bears (*Ursus arctos*). The Service proposed that the Alaskan and Canadian populations of this species, which are in Appendix II, be annotated to indicate they are included to effectively control trade in other listed species. These populations have received considerable scientific study and hunting of them is well-regulated. There is little trade in them other than as hunting trophies.

The Service's proposal was supported by the state wildlife agencies of Alabama, Missouri, Pennsylvania and Wisconsin, and by the National Wildlife Federation. The Alaska Department of Fish and Game commented that this annotation "is an improvement over the former listing but still an unnecessary burden upon the states and their citizens."

As with other annotation proposals, the Defenders of Wildlife objected on the procedural grounds discussed above in relation to the goshawk. They did not offer any substantive comments on this particular proposal.

The service has determined, on the basis of the substantial information on this species and in consideration of the above comments, to support the proposal.

In conclusion, the Service wishes by means of this notice to acknowledge the many comments it has received from individual citizens, organizations, and state and federal agencies in connection with the survey of native species. The final results of these proposals will be announced in the FEDERAL REGISTER shortly after the meeting of the Conference of the Parties.

The Service has determined that the proposals submitted for adoption by the Parties do not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Therefore, an Environmental Impact Statement is not required.

This notice is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; Stat. 884, as amended), and was prepared by Dr. Richard L. Jachowski, Federal Wildlife Permit Office.

NOTE.—Although certain previous notices published in connection with this survey have been characterized as rulemakings, the Department of the Interior has determined that this notice does not constitute a rulemaking, and therefore Executive Order 12044 concerning improving government regulations does not apply to it.

Dated: February 8, 1979.

ROBERT S. COOK,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 79-4695 Filed 2-13-79; 8:45 am]

Federal Register

WEDNESDAY, FEBRUARY 14, 1979

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development and Office of the Assistant Secretary for Housing—Federal Housing Commission

■

LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

SUBCHAPTER A—SLUM CLEARANCE AND URBAN RENEWAL

[24 CFR Parts 501 and 806]

[Docket No. R-79-619]

LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth regulations for the provision of employee benefit plans by local public agencies and public housing agencies. It would also assist insurance companies in the development and administration of employee benefit plans for such employees. HUD policy governing employee benefit plans for local public agencies is identical to HUD policy for public housing agencies. In another document published in this issue this policy has been codified and set out for public comment. This document makes applicable those codified provisions to the slum clearance and urban renewal program.

DATE: Public comments must be received by HUD on or before April 16, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6460. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: HUD policy governing employee benefit plans for local public agencies (LPAs) is identical to HUD policy for public housing agencies. This document makes applicable to Subchapter A—Slum Clearance and Urban Renewal, the requirements of Chapter VIII, Part 806, Local Public Agencies and Public Housing Agencies Employee Benefit Plans.

Part 806 is published as a proposed rule elsewhere in this issue of the FEDERAL REGISTER. Copies of Part 806 are available from the Office of Assisted Housing Management, Room 6246, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures, a copy of this Finding of Inapplicability is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, it is proposed to amend Chapter V of Title 24 of the Code of Federal Regulations by adding a new Part 501 as set forth below.

PART 501—LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

§ 501.1 Applicability of Part 806.

The requirements of Chapter VIII, Part 806 of this title governing Local Public Agencies and Public Housing Agencies Employee Benefit Plans are applicable to the provisions of this Subchapter A.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Signed at Washington, D.C. this 7th day of February 1979.

ROBERT EMBRY,
Assistant Secretary for Community Planning and Development.

[FR Doc. 79-4770 Filed 2-13-79; 8:45 am]

[4210-01-M]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 806]

[Docket No. (R-79-618)]

LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth regulations for the provision of employee benefit plans by local public agencies (LPAs) and public housing agencies (PHAs). It would also assist insurance companies in the development and administration of employee benefit plans for such employees. HUD policy on employee benefit plans for LPAs and PHAs is currently contained in HUD handbooks. Enactment of the Employee Retirement Income Security Act of 1974 makes it necessary to codify this policy to better serve the public interest.

DATE: Public comments must be received by HUD on or before April 16, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6460. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Currently HUD policy on employee benefit plans for LPAs and PHAs is contained in HUD Handbooks HM 7217.2 and 7401.5. Enactment of the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93-406) makes it necessary to codify HUD policy on employee benefit plans to serve better the public interest. Publication of the proposed rule will permit comment from all interested parties, e.g., from employees of local public agencies and public housing agencies (hereinafter referred to as local agencies); insurance companies handling their benefit plans; and other interested persons or groups. Many items of current policy are being revised and these changes in policy are briefly discussed below. The final rule will be supplemented by revised HUD Employee Benefit Plans Handbooks (HM 7217.2 REV-1 and 7401.5 REV-1) to provide information of an instructional and reference nature.

Section 806.102 has been included to identify the current HUD-aided programs which shall be subject to the proposed rule.

Section 806.503 has been included to emphasize that it is HUD's position that local agencies' employee benefit plans are "governmental plans" as defined in Section 3(32) of ERISA and as such would be exempt from a majority of the provisions of ERISA. The HUD Employee Benefit Plans Handbooks will elaborate on the applicable provisions of ERISA.

Under section 806.508, a local agency would not be allowed to make a "contribution" to an Individual Retirement Account (IRA) in the form of a salary increase which the employee could use to offset his/her personal contribution to an IRA. HUD feels that it would be better to adopt an actual retirement plan.

Pursuant to section 806.509, HUD would no longer allow employer contributions to be deposited under an unfunded deferred compensation agreement because of the risk of forfeiture involved. There is also, at pres-

ent, a question as to whether unfunded deferred compensation agreements will be acceptable to the Internal Revenue Service. Therefore, a ruling must be obtained from Internal Revenue.

In section 806.538, the current policy on mandatory employee contributions has been revised to allow employees' contributions to be reduced from 5 percent to 3 percent without reduction in the 7 percent maximum employer contribution.

In section 806.543, current policy has been revised to allow the employer to pay both employee and employer required contributions if an employee becomes disabled as defined by the Social Security Act (42 U.S.C. 423(d)).

Subpart J (sections 806.588-596) details a uniform method by which a local agency may compare, within broad parameters, the relative value of one defined contribution retirement plan to another.

Section 806.704 has been included to clarify that under existing law Health Maintenance Organization health insurance plans may be used where available.

Section 806.708 has been included to permit dental coverage within stipulated benefit and contribution limitations.

In section 806.802, current policy has been revised to permit the local agency to pay the full premium for disability income benefits for up to one year if necessary to maintian eligibility for benefits during the period after use of available paid leave and the end of the waiting period provided in the plan.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D. C.

Accordingly, it is proposed to amend Chapter VIII of Title 24 of the Code of Federal Regulations by adding a new Part 806 as set forth below.

PART 806—LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

Subpart A—Introduction

Sec.
806.101 Purpose.
806.102 Applicability.
806.103 Policy.
806.104 Comparability.
806.105 Allowable forms of employee benefit plans.
806.106 Availability of funds.
806.107 Proration of contributions.
806.108 General limitation.
806.109 Employee participation.
806.110 Multiple employment.
806.111 Conflict of interest.
806.112 Retention of records.
806.113 Previously approved plans.
806.114 Approval.

Subpart B—Social Security

806.201 Policy.
806.202-206 [Reserved]
806.207 Approval.

Subpart C—Unemployment Compensation

806.301 Policy.
806.302-306 [Reserved]
806.307 Approval.

Subpart D—Public Employee Benefit Plans

806.401 Policy.
806.402 General.
806.403 Contributions.
806.404 Changeover problems.
806.405 Approval.

Subpart E—Private Retirement Plans—General Requirements

806.501 Policy.
806.502 Purpose.
806.503 Employee Retirement Income Security Act of 1974.
806.504 [Reserved]
806.505 Definition.
806.506 Standard plans.
806.507 Internal Revenue Service qualification.
806.508 Individual retirement accounts.
806.509 Salary reduction plans.
806.510 Consultants.
806.511 Effective date.
806.512 Escrow agreements.
806.513 Underwriting.
806.514 [Reserved]
806.515 Record keeping and accounting.
806.516 Expenses.
806.517 Regular employees.
806.518 Participation requirements.
806.519 Effect of delayed participation.
806.520 Payment to employees.
806.521 Spendthrift provision.
806.522 Leave of absence.
806.523 Portability.
806.524 Fiduciary responsibility.
806.525 Revision or change.
806.526 Additional provisions.
806.527 Amendment.
806.528 Termination of plan.
806.529 [Reserved]
806.530 Approval.
806.531-536 [Reserved]

Subpart F—Private Retirement Plans—Specific Requirements

806.537 Miscellaneous definitions and provisions.
806.538 Normal retirement benefit.
806.539 Prior service benefit.
806.540 Special prior service benefit.
806.541 Early retirement benefit.
806.542 Late retirement benefit.
806.543 Disability retirement benefit.
806.544 Termination benefit (vesting).
806.545 Repayment of a termination distribution.
806.546 Pre-retirement death benefit.
806.547 Post-retirement death benefit.
806.548-553 [Reserved]

Subpart G—Private Retirement Plans—Equity Investments

806.554 Policy.
806.555 Definitions.
806.556 Element of risk.
806.557 Investment objective.
806.558 Investment restrictions.
806.559 Mandatory employee contributions.
806.560 Voluntary employee contributions.
806.561 Employer contributions.
806.562 Transfer of employer contributions.
806.563 Additional requirements.
806.564 Approval.
806.565-567 [Reserved]

Subpart H [Reserved]

806.568-578 [Reserved]

Subpart I [Reserved]

806.579-587 [Reserved]

Subpart J—Private Retirement Plans—Plan Comparison System

806.588 Policy.
806.589 Purpose.
806.590 Rationale.
806.591 Basic formula.
806.592 Application of formula.
806.593 Considerations used in the rating system.
806.594 Comparison of plans.
806.595 Evaluation of plan ratings.
806.596 Standard plan designation.
806.597-599 [Reserved]

Subpart K—Life Insurance

806.601 Policy.
806.602 Definition.
806.603 General limitations.
806.604 Special type policies.
806.605 Approval.

Subpart L—Health Insurance

806.701 Policy.
806.702 Public plan.
806.703 Comparable private plan.
806.704 Health maintenance organizations.
806.705 Autonomous private plan.
806.706 Limitations required.
806.707 Exclusions.
806.708 Dental expense benefit.
806.709 Medicare and medicare supplements.
806.710 Individual policies.
806.711 Coverage while on leave of absence.
806.712 Life insurance.
806.713 Approval.

Subpart M—Miscellaneous Benefit Plans

806.801 Policy.
806.802 Disability income benefits.
806.803 Accidental death and dismemberment.
806.804 Approval.

Subpart N [Reserved]

Subpart O—Appendices

[Appendices I and IV, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD Employee Benefit Plans Handbooks, HM 7217.2 REV-1 and 7401.5 REV-1.] Appendix II Dis-

counting Factors—Appendix III Sample Form.

AUTHORITY: United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

PART 806—LOCAL PUBLIC AGENCIES AND PUBLIC HOUSING AGENCIES EMPLOYEE BENEFIT PLANS

Subpart A—Introduction

§ 806.101 Purpose.

This rule contains HUD policy and procedural regulations for the provision of employee benefit plans for employees of local public agencies and public housing agencies, and it assists insurance companies in the development and administration of employee benefit plans for such employees. The Assistant Secretary for Housing—Federal Housing Commissioner, or his designee, may exempt an employee benefit plan from any provisions of this part. Each such exemption shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

§ 806.102 Applicability.

(a) *Urban renewal—LPAs.* This part is applicable to local public agencies (LPAs) which are continuing to operate an urban renewal program under an existing loan and grant contract regardless of the availability of Community Development Block Grant Funds.

(b) *Public housing projects—PHAs.* This part is applicable to PHAs which administer public housing projects including Section 10(c) and Section 23 Leased Housing projects. This part is not applicable to the Section 8 program or the Indian Housing program.

(c) *Exception.* This part is not applicable to LPAs or PHAs which are subject to local governmental civil service regulations.

(d) *Definition.* As used in this part, the term "local agency" means those LPAs and PHAs to which this part is applicable.

§ 806.103 Policy.

It is the policy of HUD to encourage local agencies to adopt employee benefit plans. In this respect local agencies are authorized to adopt either a public or a private employee benefit plan subject to the requirements stated in this part. Substantial compliance, as determined by HUD, with the regulations contained herein shall govern HUD approval of any employee benefit plan. Local agencies may not, however, implement an employee benefit plan until such time as there is assurance to HUD that the HUD-aided program can be expected to continue on an active basis.

§ 806.104 Comparability.

An allowable form of employee benefit plan may be provided by a local agency for its employees even though a similar type of plan is not made available by State or local govenmental bodies to public employees. However, local agencies shall include consideration of employee benefit plan costs as a factor in comparing total compensation of local agency employees with total compensation of public employees. Once established, comparable salaries may be adjusted to reflect changes in public practice without further consideration of employee benefit plan costs. Comparability documentation covering all positions shall be retained on file for HUD examination and audit, and shall be complete, including identification of the source of supporting material and the basis or reasoning for establishing such comparability. A new comparability determination shall be made if revision or adoption of an employee benefit plan would result in total compensation of local agency employees appreciably in excess of the total compensation of public employees. The determination of what constitutes "appreciably in excess" shall be made exclusively by HUD.

§ 806.105 Allowable forms of employee benefit plans.

The following types of employee benefit plans may be provided and contributions made thereto are allowable costs:

(a) Social Security (see subpart B).

(b) Unemployment Compensation (see subpart C).

(c) Any type of public employees' benefit plan established by a governmental body such as a State, county, or municipality (see subpart D).

(d) A privately underwritten employee benefit plan or plans providing the following types of coverage:

(1) Retirement benefits (see subparts E, F, G, and J).

(2) Life insurance (see subpart K).

(3) Health and hospitalization benefits (see subpart L).

(4) Disability income benefits (see subpart M).

(5) Accidental death and dismemberment protection (see subpart M).

(e) Workmen's Compensation. This form of coverage is required (see HUD Guide HM G 7401.5 for details).

§ 806.106 Availability of funds.

Employer contributions shall at all times be subject to availability of funds. If the revision of an existing plan or the adoption of a new plan would create an increase in expenses in excess of approved budgetary allowances, the local agency shall obtain concurrence from the appropriate HUD office that adequate funds are or can be made available. In no instance may a HUD Field Office approve an employee benefit plan for a PHA which is dependent upon Federal Subsidies above amounts currently eligible to that PHA.

§ 806.107 Proration of contributions.

Local agency contributions toward the cost of an employee benefit plan shall be charged to individual programs or projects on the same basis as is used in distributing compensation of participating employees.

§ 806.108 General limitation.

Except as provided in section 806.704, in no event may a local agency contribute to more than one particular type of employee benefit plan for the same class of employees, unless specifically authorized by law.

§ 806.109 Employee participation.

(a) *Bona fide employee.* In order to be eligible to participate in a public or a private employee benefit plan, an employee must be a bona fide employee under the common-law test. Under this test, the employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficent that the employer has the right to do so.

(b) *Independent contractor.* A professional, such as and attorney, architect, or accountant, who does not meet the common-law test, is considered by HUD to be an independent contractor. An independent contractor is not permitted to participate in local agency private employee benefit plans. Participation in public employee benefit plans by an independent contractor is permitted, if State or local law requires or permits an independent contractor to participate. However, a local agency may not contribute on behalf of an independent contractor who is eligible to participate in a public employee benefit plan.

§ 806.110 Multiple employment.

An employee who is employed by more than one local agency under a common service arrangement shall be classified as a regular employee for the purpose of participation provided total employment with all such local agencies is for not less than five months per year nor for less than 20 hours per week. Each employer shall contribute its pro rata share of the "employer contribution" on the same

basis as is used in prorating the employee's compensation.

§ 806.111 Conflict of interest.

A local agency may not enter into any contract or arrangement with respect to any employee benefit plan in which any member of the Board of Commissioners or board of directors, officer or employee of the local agency or any employee of a governmental body associated with the local agency has any interest, direct or indirect, during his/her employment or tenure or for one year thereafter.

§ 806.112 Retention of records.

Every employee benefit plan will require that the local agency maintain records which will serve as evidence of an employee's eligibility to participate and entitlement to benefits. The PHA should contact the benefit plan's underwriter to determine what records must be maintained. Such records shall be maintained for a period not less than that required by applicable Federal or State law.

§ 806.113 Previously approved plans.

Employee benefit plans previously approved pursuant to HUD requirements then in effect may be continued without change. In the event of a substantial amendment, such plan shall then be subject to the provisions prescribed in the appropriate subpart of this part.

§ 806.114 Approval.

All new or revised employee benefit plans shall be submitted to the appropriate HUD office for approval before execution of any plan documents or contracts and before payment of any premiums thereto. This approval relates only to authorization to adopt such employee benefit plan but does not constitute specific budgetary approval. Availability of funds for present of future contributions shall be approved separately as part of the regular budgetary process.

Subpart B—Social Security

§ 806.201 Policy.

Employer costs for participation in Social Security are an eligible operating expense. [See HUD Employee Benefit Plans Handbooks HM 7217.2 REV-1 and 7401.5 REV-1 for additional details.]

§ 806.202-206 [Reserved]

§ 806.207 Approval.

Specific HUD approval is not required to participate in the Social Security system. However, it will be necessary to secure budgetary approval for the required expenditures.

Subpart C—Unemployment Compensation

§ 806.301 Policy.

Employer costs for participation in a State unemployment compensation insurance program are an eligible operating expense. [See HUD Employee Benefit Plans Handbooks HM 7217.2 REV-1 and 7401.5 REV-1 for additional details.]

§ 806.302-306 [Reserved]

§ 806.307 Approval.

Specific HUD approval is not required to participate in a State unemployment compensation insurance program. However, it will be necessary to secure budgetary approval for the required expenditures.

Subpart D—Public Employee Benefit Plans

§806.401 Policy.

Employer costs for participation in a public employee benefit plan are an eligible operating expense where a local agency is required or permitted to participate therein.

§806.402 General

Public plans refer to those plans established by a governmental body, such as a State, county, city, or other municipality. In many cases, local agencies may voluntarily participate in a public plan. In some cases membership in a public plan is mandatory rather than permissive. In a public plan the local agency must accept all existing provisions of the plan as well as any future conditions which may be imposed.

§806.403 Contributions.

Local agency contributions for a public employee benefit plan may not exceed the employee-employer sharing formula or method applicable to other members in the plan. In no event may a local agency assume obligations for payment of any contributions or special benefits beyond the date on which an employee terminates employment or where a duplication of benefits would occur.

§806.404 Changeover problems.

In cases where a local agency changes from a private employee benefit plan to a public plan, circumstances may arise which would have a detrimental effect upon certain employees. HUD will assist a local agency to resolve such adverse situations in an equitable manner. In this respect deviations from established regulations will be allowed to the extent necessary to achieve appropriate solution.

§806.405 Approval.

Before entering a public employee benefit plan and before making any employer contributions thereto, the local agency shall submit to the appropriate HUD office for approval satisfactory evidence that the local agency is eligible or required to enter the public plan.

Subpart E—Private Retirement Plans—General Requirements

§806.501 Policy.

A local agency may provide private retirement plan benefits within the limitations stated in subparts E, F, and G.

§806.502 Purpose.

The following is a description of the criteria governing HUD approval where the local agency wishes to adopt a private retirement plan. This has no effect on the availability or status of public employee benefit plans discussed in subparts D, K, and L of this part. The purpose of these regulations is to assure that:

(a) Design considerations and plan administration are based upon proven retirement plan principles and practices,

(b) The plan meets the requirements for qualification under the Internal Revenue Code, and

(c) That local agency plans meet certain requirements stipulated by HUD.

§806.503 Employee Retirement Income Security Act of 1974.

It is the position of HUD that local agency retirement plans fall within the term "governmental plan" as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) and as such would not be required to comply with a majority of the provisions of ERISA. [Note: If the Department of Labor and/or the Internal Revenue Service subsequently rule(s) that local agencies are subject to the provisions of ERISA, these regulations shall be revised accordingly.] [See HUD Employee Benefit Plans Handbooks HM 7217.2 REV-1 and 7401.5 REV-1 for additional details.]

§806.504 [Reserved]

§806.505 Definition.

A private retirement plan shall mean, within the context of these regulations, a plan:

(a) Created for the primary purpose of providing employees with an income after retirement.

(b) Designed in such a manner so as not to discriminate in favor of officers, supervisors, or other highly compensated employees. The tests regarding discrimination shall be the same as those applied by the Internal Revenue Service to other retirement plans adopted within the corporate community.

(c) The provisions of which are in writing, communicated to the employees and intended by the local agency to be permanent.

(d) Which is operated for the exclusive benefit of the employees or their beneficiaries.

(e) That provides that, until all liabilities have been met, no funds contributed on behalf of employees or any income thereon may be used for any purpose other than for the exclusive benefit of employees or their beneficiaries.

[NOTE: Any interpretation of these criteria or inconsistency with these regulations shall be resolved by HUD. Such resolution shall be conclusive.]

§806.506 Standard plans.

HUD has approved a variety of plans designated as "standard plans" to indicate their pre-approved status and general availability. A listing of "HUD Approved Standard Plans" is shown in Appendix I. Designation as a standard plan does not constitute an endorsement of any plan. The designation merely certifies that the plan conforms to HUD criteria. Proposed standard plans may be submitted by an insurance company or other plan sponsor directly to the Director, Program Management Division, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

§806.507 Internal Revenue Service qualification.

All private retirement plans adopted or amended after the effective date of this part shall be qualified under the Internal Revenue Code. The plan shall provide that before the issuance of an initial determination letter by the Internal Revenue Service, no participant may have a vested interest in amounts contributed by the employer. If such letter cannot be obtained, the employer shall terminate the plan and shall recover all funds held under the plan which are attributable to its contributions.

§806.508 Individual retirement accounts.

Individual Retirement Accounts, Individual Retirement Annuities or Individual Retirement Bonds (IRAs) as defined in Internal Revenue Code (IRC) Sections 408(a), 408(b) and 409 are not considered employee benefit plans for the purposes of these regulations. Therefore, local agencies may not contribute to these plans to provide retirement benefits for employees. In the event a local agency does not have a retirement plan for employees, it might consider informing employees that an IRA may be available as a viable retirement planning medium to be provided independent of any local agency contribution.

§806.509 Salary reduction plans.

(a) Salary reduction plans are those retirement plans which provide a tax deferral for the employee, or the employee and the local agency, of contributions until some future date. Normally, they are of two types:

(1) Tax sheltered annuity. Employees of certain tax-exempt organizations (those that meet the requirements of IRC Section 501(c)(3) of the Internal Revenue Code) are eligible under IRC Section 403(b) to exclude from their current gross income amounts paid by their employers (through salary reduction or otherwise) towards the purchase of annuities or deposited in special custodial accounts. The total excludable contribution is limited by law.

(2) Unfunded deferred compensation agreement. This is a contractual arrangement between the employee and the employer where the later agrees to pay a benefit at some future date. If the employer purchases annuities or sets up an accounting reserve to provide the funds to meet this future liability, the employees incurs no current taxation because there is no incidence of ownership in anything but the contract itself. There would be no economic benefit inuring to the employee so long as there is a substantial risk of forfeiture with regard to the benefits promised. The Internal Revenue Service has held that so long as the employer's promise to pay is not secured in any way there is a risk of forfeiture.

(b) Both types of arrangements may be explored by a local agency to determine their appropriateness for use. A tax sheltered annuity plan as defined above may constitute an employee benefit plan in accordance with these regulations but deferred compensation agreements may not constitute an employee benefit plan. Therefore, a tax sheltered annuity plan may be used as a supplemental benefit with employee money only or as a primary retirement benefit program with local agency contributions as well. If the tax sheltered annuity approach is used as the primary retirement benefit program of a local agency, other applicable sections of these regulations shall apply.

(c) The deferred compensation agreement approach may ber used as a supplemental program with employee money only. It is required that the local agency obtain a determination from the internal Revenue Service, through a Private Letter Ruling or other Internal Revenue procedure, assuring the local agency and participating employees that the contractual agreement used to defer compensation will in fact achieve that end.

§806.510 Consultants.

It is the prerogative and responsibility of the local agency to determine which type of plan it desires to adopt. If actuarial services are required either in the initial design stage or on an annual basis for plan administration, this work shall be performed under the supervision of an Enrolled Actuary as defined by regulations issued by the Joint Board for the enrollment of Actuaries (see ERISA Section 3042). In addition, the local agency may require the services of legal counsel in connection with the establishment of a trust instrument within local law. For this purpose a consultant's or counsel's fee may be charged as an eligible operating expense separate and distinct from the plan's allowable contribution. Any payment shall be subject to prior written approval of the appropriate HUD office and funds shall be available or otherwise budgeted.

§806.511 Effective date.

The effective date of a plan should be established to coincide with the collection of employee contributions. The effective date may be any date determined appropriate by the local agency within its fiscal year. Any local agency contribution shall be subject to HUD approval but may be made in advance of such approval where the local agency has entered into an escrow agreement for the purposes described in section 806.512.

§806.5512 Escrow agreements.

Subject to approval of the appropriate HUD office, local agencies may enter into escrow agreements to bind retirement plan coverage pending completion of the retirement plan and receipt of final HUD approval. Such escrow agreements shall specify the following:

(a) Employee and local agency future service contributions may not exceed the allowances stated in section 806.538.

(b) Temporary term life insurance coverage, if provided during the escrow period, may not exceed one and one-half (1.5) times annual salary. (If it is intended that life insurance [permanent or term] is to be provided as an integral part of the retirement plan upon HUD approval, see subpart K for more details.)

(c) A definite time limit not in excess of six months. However, if additional time is needed to complete the plan or to obtain HUD approval, the binder may be approved in advance for extension on a month-to-month basis.

(d) the effective date of the binder shall constitute the effective date of the plan.

(e) Should no approval be received from HUD, the insurer shall refund

the current value of all premiums paid less the cost of temporary term life insurance premiums, if any.

(f) A brief description of the type of plan and coverage to be included.

(g) All contributions shall be limited to a fixed investment account for the duration of the escrow period.

§ 806.513 Underwriting.

The retirement plan shall be underwritten on an accepted actuarial basis and shall conform to proven retirement plan principles and practices. Retirement plan assets shall be managed by a professional money manager, which may include a life insurance company, a corporate fiduciary such as an investment bank, or a regulated investment company such as a mutual fund. Plan assets shall be deposited in a guaranteed investment medium except where equity investment is utilized pursuant to subpart G. Upon retirement or other termination of employment, unless a lump sum settlement option is elected and approved by the local agency, benefits shall be guaranteed by a life insurance company or retirement association through the purchase of individual or group policies. Permanent insurance policies such a "whole life" or "straight life" can be used where life insurance coverage is to be included subject to the provisions of subpart K. Non-life insurance retirement annuity policies can be used where life insurance is not to be provided or where life insurance is provided through a term policy. These policies may be mixed and/or split funded by using a side fund arrangement. The deposit administration (DA) type of contract may also be used. An actuarial valuation shall be made of any defined benefit plan at least every three years (or more frequently, if required by the IRS) in order to support the determination that the present value of benefits which the plan will pay can be funded by the assets and contributions made thereto. Actuarial assumptions, in the aggregate, shall be reasonable, taking into account the plan's experience and expectations. The assumptions shall represent the actuary's estimate of anticipated plan experience. A copy of the actuarial report shall be submitted to HUD for review and approval.

§ 806.514 [Reserved]

§ 806.515 Record keeping and accounting.

The local agency, in conjunction with the insurance company or any outside administrator who will be maintaining records, shall establish an appropriate system for maintaining records of credited service and earnings with respect to non-retired employees. Additional records may be needed for retired employees if there is to be a cost-of-living adjustment. Any such records shall be coded separately for each employer covered under a multiple employer plan to permit proper allocation when required.

§ 806.516 Expenses.

Routine operating expenses for the administration of the plan shall be paid from the basic contribution allowance or from forfeitures, dividends, or other plan assets. Such routine operating expenses include record keeping, investment expense, commissions or other contract loading, and corporate trustee or administrator fees, if any. An officer or employee of a local agency serving as a trustee/administrator shall serve without compensation. In addition to the basic contribution, the employer may pay for non-routine unusual expenses, but only to the extent that such expenses are not covered by the insurance company or plan administrator as part of its routine service function. Such expenses may include (a) reasonable one-time setup expenses for booklets, forms, etc.; (b) consulting services including plan development or evaluation and actuarial valuations; (c) legal fees; (d) periodic auditing; (e) necessary local agency travel; (f) office expenses such as stationery or postage; (g) preparation of materials and forms to be submitted to the Internal Revenue Service for qualification of the retirement plan; and (h) any reporting costs imposed on the plan by a Federal, State or municipal requirement.

§ 806.517 Regular employees.

Only regular employees need be considered for participation under the eligibility requirements. A regular employee is one whose customary employment is for more than 20 hours per week or for more than five months per plan (or calendar) year, or some other lesser period, acceptable to HUD, where the job requirements of a local agency are such that the above service requirements are not necessary to perform 100 percent of the job functions of the local agency. As an alternative, the 1,000 hour test imposed by ERISA may be substituted for the 20-hour/five-month test required herein. If a waiver is granted by HUD under this section, all other subparts of this part shall be applicable, other than for temporary employees.

§ 806.518 Participation requirements.

Participation by eligible regular employees, employed on the original effective date, shall be optional at the time the plan is put into effect or at the time they become eligible. Thereafter, participation by eligible employees hired after the effective date shall be mandatory as a condition of employment. A participant may not be allowed to cease participation while classified as a regular employee. A participant in any existing plan shall be required to participate in any amended or replacement plan.

§ 806.519 Effect of delayed participation.

An eligible employee who does not elect to become a participant as of the original effective date (or upon becoming eligible to do so) may be permitted to become a participant at a later entry date (provided the plan's eligibility requirements are still met). However, an employee who does not elect to participate when first eligible to do so may not be entitled to prior service benefits for any period of employment before becoming a participant.

§ 806.520 Payment to employees.

Interest may be paid to employees on their accumulated voluntary or mandatory contributions refunded at death or termination of employment based upon actual investment experience. The plan should contain a time limit for terminated employee to apply for a benefit after reaching normal retirement age, and this may be either five years or any other period which is less than the period prescribed in the jurisdiction, after which the funds escheat to the State. An employee who does not so apply shall be deemed to have died, and the proceeds shall be settled accordingly.

§ 806.521 Spendthrift provision.

The plan shall provide that employees, beneficiaries, local agencies or trustees may not have the power to anticipate, assign, hypothecate or transfer any benefits or assets of the plan, and any contracts provided thereunder may not be sold, assigned, discounted or pledged as collateral for a loan or security for the performance of any obligation or for any other purpose, except as may be expressly provided in this part.

§ 806.522 Leave of absence.

The plan may provide for authorized leave of absence for any purpose. In this event, employer contributions shall be suspended but credits already purchased shall remain in effect. Provision may also be made for payment of premiums solely by the employee while on leave of absence. Upon return to service the employee may be eligible to participate on the next entry date provided in the plan. Prior service coverage may not be provided for leaves of absence. Periods of authorized leave of absence may be counted for the purpose of determining vesting under the plan provided the participating employee is (1) engaged in military service or (2) on an authorized

leave of absence not to exceed two years. Paid sick or annual leave or military leave (for a period not to exceed 90 days) need not be classified as a leave of absence. All the provisions of this section shall be applicable for a "leave of absence" due to a collective bargaining dispute, except for the purposes of contributions and/or the accrual of benefits in which event contributions will recommence on the date of reemployment.

§ 806.523 Portability.

With the consent of both local agencies and insurer(s) involved credited service and the attending liabilities and plan assets may be transferred from one plan to another. If such a transfer is desirable and practical, it may only be done between plans, both of which are qualified with the Internal Revenue Service under Section 401(a) of the Internal Revenue Code.

§ 806.524 Fiduciary responsibility.

An officer or employee of the local agency, even though serving as a trustee or committee member, shall have responsibility only for the selection of a funding agency. Responsibility for the management, control, or investment of plan assets (other than for ownership of a policy) shall be handled through an organization that provides facilities for the accumulation and safekeeping of the assets such as a life insurance company, a corporate fiduciary (e.g., a bank) or a regulated investment company (e.g., a mutual fund). The employer or trustee may, however, temporarily hold employee or employer contributions and any forfeitures or other returns pending their disposition pursuant to the terms of the plan.

§ 806.525 Revision or change.

Any revision, change, amendment or restatement of the plan, contract or funding method or change of insurance company after the effective date of the plan shall be subject to prior HUD approval and shall conform to any HUD policy in effect at that time.

§ 806.526 Additional provisions.

A retirement plan and the contract(s) thereunder may contain additional provisions which are not inconsistent with the policy stated in this part.

§ 806.527 Amendment.

This section prescribes the policy and conditions to be observed in cases where an existing plan is amended.

(a) *Policy.* Local agencies may revise existing private retirement plans to take advantage of the provisions of this subpart. In this event, the plan shall be revised to comply fully with all stated requirements. The amendment, including the original plan, shall be submitted to the appropriate HUD office for approval.

(b) *Preservation of rights.* No amendment may adversely affect the rights accrued by any participant before the amendment. Further, in no event may a participant's vested percentage in the accrued benefit immediately after a plan amendment be less than the vested percentage immediately prior to such amendment.

(c) *Prior service.* The local agency shall protect prior service benefits as provided under the original plan. Prior service contributions, if any are due, shall be made in accordance with the provisions of section 806.539. the amended plan may not provide additional prior service benefits.

(d) *Participation.* Participants in the original plan shall be required to participate in the amended or replacement plan. Once in the amended plan an employee shall stay in as a condition of employment.

§ 806.528 Termination of plan.

Prior written approval from HUD shall be obtained if the retirement plan is to be terminated. In addition to the termination provisions prescribed by the Internal Revenue Service under a qualified plan, the plan shall provide that no employee may be permitted to withdraw or surrender his/her vested interest in all contracts or other assets held for his benefit while continuing to be a regular employee.

§ 806.529 [Reserved]

§ 806.530 Approval.

Before executing, replacing or amending a private retirement plan contract and before making any contributions to the plan (except under an escrow agreement as provided in section 806.512), the local agency shall submit the following documentation to the appropriate HUD office for review and subsequent advice concerning approval:

(a) A copy of the proposed application, if any, the trust agreement, plan document or contract, and the insurer's policies, including all applicable premium and benefit schedules, and the actuarial valuation, if any. In the event a standard plan (see section 806.506) is to be adopted, documentation to be submitted for prior approval may consist solely of a statement certifying that the local agency shall adopt the standard plan, identified by the specifically assigned control number, as originally approved (including any subsequent amendments which were approved).

(b) With respect to prior service benefits, a list of all present employees eligible for these benefits, including for each the salary, age, sex, period of eligible prior service, value of the annuity which would be provided, and the single premium or annual installment which will be used to amortize the prior service liability over one or more years, as applicable.

§ 806.531-536 [Reserved]

Subpart F—Private Retirement Plans—Specific Requirements

§ 806.537 Miscellaneous definitions and provisions.

(a) *Service for plan participation.* An employee must receive credit for one year of service for each year during which he is classified as a regular employee. Service may not include any periods during which the employee was eligible to participate but did not make required contributions.

(b) *Service for vesting and benefit accruals.* An employee may receive credit for one year of service (or portions thereof rounded to the nearest month) for each year of continuous employment commencing with his most recent date of hire during which he was a regular employee or plan participant (as determined by the plan) with his present employer or with a predecessor employer consistent with section 806.523 on portability. Service may not be credited for any period of time during which an employee voluntarily declined or delayed participation in any former or present plan sponsored by a local agency, nor may service be credited for periods of employment before the effective date of the plan, except as provided in section 806.539. An employee who is reemployed after a break in service shall be treated as a new employee except that for purposes of any minimum benefit he may receive only one such minimum benefit.

(c) *Accrued benefit.* The accrued benefit shall be the balance of an employee's account or accounts consisting of employee and local agency contributions plus income and other gains less expenses and other losses attributable thereto. If separate accounts for employee contributions are not maintained, the amount allocated to the accrued benefit from employee contributions shall be the same percentage of the total accrued benefit as the ratio of employee contributions less withdrawals bears to the total of employer contributions less withdrawals and employee contributions less withdrawals.

(d) *Monthly earnings.* The definition of monthly earnings shall be determined by the local agency's plan. This definition shall specify whether basic or total compensation shall be used and the method of determining this amount.

(e) *Mandatory employee contributions.* Each local agency shall require employee contributions as a condition

of plan participation. Such contributions shall be at least 3 percent of an employee's basic compensation, but may not be more than 5 percent of an employee's total compensation over a 12-month period (see subpart K if life insurance is provided).

(f) *Voluntary employee contributions.* The plan may provide for voluntary employee contributions. These contributions may not, however, exceed 10 percent of an employee's total compensation over a 12-month period as defined in the plan.

(g) *Eligibility to participate.* A local agency's plan may not require an employee to serve longer than one year or attain an age greater than 25 as a condition of participation. A maximum age limitation may be established if desired by the local agency, provided such limitation is not considered by the Internal Revenue Service as discriminatory. No plan provision, however, may be adopted which would require an employee's termination of employment before age 70.

(h) *Benefits.* Plan benefits shall be payable upon a participant's normal, early, late or disability retirement, as determined by the plan or upon death. Also, benefits may be payable upon termination of employment. Unless specific provisions are made to the contrary, benefits shall be paid monthly under the normal form of annuity as determined by the plan. Alternate forms of payment, including a lump sum cash settlement, may be made available. In the event alternate forms of payment are provided by the plan, the election of such forms of payment shall be conditioned upon the approval of the local agency, trustee or administrator so as to avoid the employees' constructive receipt of any such alternate forms of payment before such approval.

§ 806.538 Normal retirement benefit.

(a) *Eligibility.* The normal retirement date may be any age determined by the local agency. Ordinarily, normal retirement age is 65 to coincide with the retirement age (for males) under the old age and survivors' provisions of the Social Security Act. The local agency may establish an earlier or later age, if desired. In general, an age earlier than 60 or later than 70 should be avoided. If a normal retirement date is selected which is before a participant's attainment of age 70, the plan may require a cessation of a participant's and local agency contributions at that time. However, the plan may not require a participant's termination of employment solely due to attainment of a particular age which is before age 70. The plan may nevertheless require a participant to terminate employment before the commencement of benefit payments.

(b) *Amount.* The amount of monthly benefit commencing on the normal retirement date shall be an amount purchased with a participant's account balance as of that date. In accumulating a participant's account balance the following conditions shall be met.

(1) Contributions.

(i) The local agency may contribute up to 7 percent of an employee's total compensation to provide retirement benefits (see subpart K if life insurance is provided).

(ii) The local agency shall contribute an amount at least equal to that required to be contributed by the employee.

(iii) Employees shall contribute at least 3 percent of basic compensation but may not be required to contribute an amount which exceeds 5 percent of their compensation as defined by the plan (see subpart K if life insurance is provided). Under certain circumstances, employee contributions are not required where a procedure, approved by HUD, has been established which would require that employees not be credited with a prospective salary increase in one or more years.

(2) Life insurance. Where life insurance is provided as part of the plan, see subpart K and section 806.545 for further details.

(3) Salary brackets. Participating employees may be classified by salary brackets for the purpose of computing contributions.

(4) Payment of contributions. Contributions may be paid on an annual, semi-annual, quarterly, monthly, or other periodic basis. Where contributions are paid in advance by the local agency, the plan shall provide for reimbursement through employee withholding and for recovery of any excess contribution not due in the event of termination of employment. The plan may not permit the employer or trustee to borrow or otherwise exercise a policy loan, if available, to pay contributions.

(5) Refunds. Refunds such as experience rating credits, forfeitures of unvested contributions and similar recoveries may be used first to reduce routine expenses of the plan and then to reduce employer contributions becoming due thereafter. Any dividends or interest credited to the plan assets shall be credited to individual participant account balances.

§ 806.539 Prior service benefit.

(a) *Eligibility.* Local agencies which have not adopted a public or private retirement plan previously are authorized to make contributions with respect to prior service benefits. Prior service coverage may be provided only for employees who become participating employees as of the effective date. These benefits shall be forfeited by otherwise eligible employees not electing to participate at inception of the plan. Prior service coverage shall be limited to three years (36 months) of continuous service immediately preceding the effective date.

(b) *Amount of benefit.* Prior service coverage (including special prior service [see section 806.540]) may be determined pursuant to the following procedure. The annual prior service annuity shall be that amount of retirement income commencing at the normal retirement date which can be provided by the value at retirement of a total contribution equal to the product of the employer future service contribution (up to 7 percent) times the rate of basic monthly compensation on the effective date times the number of full months of eligible service in the employ of the local agency.

(c) *Purchase of annuities.* The prior service annuity may be purchased on a paid-up deferred annuity basis. Alternatively, the net contribution determined under section 806.539(b) may be deposited in either a fixed dollar account or an investment account as provided in subpart G with the actual annuity being purchased at retirement. An employee requesting that the contribution be deposited in an investment account shall be required to sign a statement or waiver acknowledging that the final annuity purchased may be larger or smaller than originally contemplated.

(d) *Refunds.* Refunds arising from the prior service provisions of the plan shall be applied in the same manner used for the handling of refunds resulting from future service contributions.

(e) *Contributions.* Contributions pursuant to this section shall be paid exclusively by the local agency in one or more annual installments based on budgetary considerations.

§ 806.540 Special prior service benefit.

If certain regular employees are ineligible to participate solely because of their attained age on the effective date, the local agency may nevertheless purchase special prior service annuities without these employees becoming participating employees. For this purpose, the local agency shall assign uniform special retirement dates to such employees to fall not later than three years following the effective date or the "normal retirement date," if later. Such special retirement dates shall be used solely for the purpose of computing the special prior service benefit and may not require an employee's termination of service solely because of attainment of an age which is less than 70.

§ 806.541 Early retirement benefit.

(a) *Eligibility.* A participant (and former participant) may be permitted to retire early so long as early retirement does not occur more than 10 years before normal retirement. If early retirement is allowed, it may not be conditional upon a local agency's consent.

(b) *Amount.* The amount of monthly payment commencing on the early retirement date shall be an amount provided with a participant's account balance as of that date. Provision may be made that, although an employee retires early, benefit payments will commence at some future date not to extend beyond the normal retirement date. In this event the amount of monthly payment may be an amount provided with a participant's account balance as of that future date.

§ 806.542 Late retirement benefit.

(a) *Eligibility.* A local agency may continue the employment of any person after his normal retirement date. In this event, the plan may provide for the continuance or discontinuance of employer contributions and employee contributions. If before the effective date of this part, contributions had been discontinued after attainment of age 65, they may re-commence on a current basis or, retroactively, for a period not greater than three years to cover all or a part of the period of discontinuance. If no maximum age is required for eligibility to join the plan and contributions are continued after normal retirement age, they shall be made for all plan participants in similar circumstances.

(b) *Amount.* The amount of monthly payments commencing on the late retirement date shall be an amount purchased with a participant's account balance as of that date.

§ 806.543 Disability retirement benefit.

(a) *Eligibility.* A plan may provide for disability retirement benefits. Eligibility for such benefits shall, however, be predicated upon an employee's disability as defined by the Federal Social Security Act (42 U.S.C. 423(d)). If the employee is covered under the Social Security system, the employee shall file an application for Social Security disability benefits within 12 months after the alleged disability commenced. Recognizing that a number of local agencies do not participate in the Social Security system and as such their employees may not be eligible for Social Security disability benefits, the local agency may determine whether an employee is disabled, using Social Security's disability definition and the advice from a licensed medical doctor. Between the date that the employee alleges the disability commenced and the date that the Social Security Aministration issues a final ruling as to whether they consider the employee disabled, the local agency may make such determination as if the employee was not eligible for Social Security and such determination shall control until the Social Security Administration determines otherwise. If an employee is eligible to do so and does not file an application for disability benefits with the Social Security Administration within the 12 month period specified hereunder, the plan shall provide that the employee is thereafter no longer disabled and shall only be eligible for benefits upon termination of employment. An employee shall notify the local agency in the event the Social Security Administration no longer considers him to be disabled. Failure to provide such notice may constitute a criminal act. Where the determination of disability is left solely with the local agency, that agency shall develop procedures consistent with this subpart to monitor through physical examination or otherwise the continued disabled condition of the employee. If an employee is initially determined by the Social Security Administration not to be disabled, the local agency may continue to contribute to the plan on behalf of the employee until the employee has exhausted all administrative and legal appeal procedures available relative to that determination. If the final decision of the highest authority with jurisdiction is that the employee is not so disabled, the value of all local agency contributions made after the initial denial of benefits hereunder shall be forfeited and used to reduce future local agency contributions to the plan.

(b) *Amount.* The amount of basic benefit may be an immediate annuity provided with an employee's account balance as of the date of disability. Alternatively, the plan may provide for payment of the basic benefit to be deferred to a date not later than an employee's normal retirement date. If disability retirement benefits are to be deferred, the plan may provide that the local agency shall make a supplemental contribution to the plan after all available compensable sick and annual leave has been used by the employee. The amount of such contribution shall be an amount equal to the local agency's contribution and the employee's mandatory contribution, based upon the employee's mandatory contribution, base upon the employee's monthly earnings (as defined by the plan) at the time of disability and the percentage rate of contributions in effect at the time the contribution is actually made. The supplemental contribution may continue to the earlier of normal retirement date and the date benefit payments begin, but shall in all events cease if the employee has been determined to no longer be disabled. All supplementary contributions shall be placed in the local agency's contribution account. If, prior to eligibility to retire on the earlier of early or normal retirement, a disabled employee elects to withdraw vested benefits in mandatory employee or local agency contributions, the disabled employee shall forfeit the value of supplemental contributions since the date of disability. If the disability benefits are to be provided, in whole or in part by an insured disability income contract, the plan may provide for the continuation of employee and local agency contributions by the local agency until benefit payments commence. There may be no loss of these supplemental contributions if a disabled employee dies before normal retirement.

(c) *Special provisions.* In the event a disability retirement benefit is provided by the plan the following provisions shall be provided:

(1) A disabled participant who receives an immediate annuity and thereafter returns to the service of the employer shall be considered as a new employee.

(2) If a disabled participant is to receive a deferred annuity and recovers, any supplementary payments made by the local agency shall cease at the time it is determined (in accordance with the plan) that the employee is no longer disabled. In the event the employee returns to the service of the local agency upon recovery, the employee may continue plan participation on the date of reemployment. An employee who does not return to the service of the local agency upon recovery shall be considered to have terminated employment as of the first day of the month coincident with or next following the date of recovery and shall be entitled to a termination benefit at that time. Notwithstanding the above, an employee who recovers, reapplies for employment within a reasonable period of time and is refused employment because of the lack of an available appropriate position shall be 100 percent vested in all employee and employer contributions.

(3) If an employee is determined to be eligible for disability retirement benefits under a local agency plan, the plan shall further provide for a periodic review, at aleast annually, by the local agency to determine whether the disability has continued and whether an employee's present condition continues to qalify for disability benefits.

§ 806.544 Termination benefit (vesting).

(a) *Eligibility.* A participant shall be eligible on termination of employment for any reason except death or

normal, early, late or disability retirement.

(b) *Amount.* The amount of monthly payment commencing on the normal retirement date shall be equal to the monthly benefit provided with the sum of (1) and (2) below where:

(1) equals the account balance of a participant attributable to mandatory or voluntary employee contributions to the plan, and

(2) equals a percentage of a participant's account balance attributable to a local agency's contributions to the plan.

(c) *Vesting percentage.* The percentage referred to in section 806.544(b)(2) above may not be more liberal than 20 percent for each year of service with the local agency or participation in the plan as determined by the local agency. The vesting percentage may not be less liberal than 10 percent for each year of service or plan participation. The plan may provide that a participant may not be considered to have terminated employment and shall continue to accrue years of service for vesting purposes so long as the participating employee is (1) engaged in military service or (2) on an authorized leave of absence not to exceed two years.

(d) *Special provisions.* (1) Benefit payment. In lieu of monthly payments starting at normal retirement date, the plan may provide that a terminating employee may elect to receive, with the consent of the local agency, either a lump sum cash settlement or a monthly annuity purchasable with his account balance starting on the date the employee would have otherwise been eligible for early retirement.

(2) Reduction in force. Where mandatory employee contributions are applied to purchase individual or group permanent insurance policies, the plan may provide that, in the event of a reduction in force, additional local agency contributions may be used to make up any difference between the cash value of such policies (and any additional account balance maintained on behalf of an employee) and the amount contributed by the employee who has elected to cash out his/her own contributions coincident with a termination of employment due to such reduction in force.

(3) Amendment or replacement of plan. In no event may a participant's vested percentage in his accrued benefit immediately after a plan document be less than his vested percentage immediately before such amendment. If a plan is terminated or if there is a complete discontinuance of employer contributions, a participant shall have a 100 percent vested interest in the value of his/her account or accounts as of the date of termination or discontinuance.

(4) Special vesting conditions. Employer contributions may be fully vested upon completion of a principal program activity. The plan may provide for full vesting of employer contributions if a reduction-in-force is necessary. A determination on completion of a principal program activity or the necessity to make staffing adjustments shall be certified by formal resolution of the Board of Commissioners. The resolution should within practical limits indicate the timing of the terminations involved as well as the individuals or functions to be affected.

(5) "Bad boy" clauses. No rights, once they are required to be vested, may be lost by the employee under any circumstances (although in some circumstances, the plan may pay the employee the actuarial value of these vested rights upon separation from service). Also, rights to benefits may not be forfeited merely because the employer (or plan administrator) cannot find the employee. However, the plan should provide that the employee will have been deemed to have died and the proceeds shall be settled accordingly in those cases where it appears, that the employee's whereabouts will remain unknown for so long that the benefits would escheat to the State.

§ 806.545 Repayment of a termination distribution.

If a participant who is less than 100 percent vested in his/her account balance terminates employment and receives a lump sum distribution pursuant to section 806.544(d)(1), equal to the value of the vested portion of the account balance, the employee shall be entitled to recapture the forfeited portion of the account balance provided the employee (a) is re-employed within 12 months and becomes a participant on the next available entry date, and (b) repays an amount equal to the distribution received within 12 months after re-participation. In the case of the reinstatement of any amounts forfeited, the local agency shall, if necessary, contribute a sufficient amount to the plan to reinstate the forfeited value as provided in this section. This contribution shall be made without regard to section 806.538.

§ 806.546 Pre-retirement death benefit.

There is no absolute maximum established on the amount of death benefits payabale provided the benefit is consistent with these regulations. The total death benefit could be the sum of (a) the face value (or cash value, if greated) of all life insurance, (b) the cash value of all non-life insurance annuities, and (c) the value in cash or kind of all separate accounts, and (d) any insurance payable, pursuant to another benefit plan, if any. Upon death, an employee is fully vested in all benefits regardless of source or type. If the plan design calls for a death benefit or a portion of the death benefit to be payable out of the retirement plan from the proceeds of a life insurance contract, the requirements set forth in subpart K shall be met.

§ 806.547 Post-retirement death benefit.

Upon actual retirement a participant shall be paid a monthly annuity based upon the normal form of payment stipulated in the plan. Alternatively, optional modes of payment may be provided at the election of the participant and with the consent of the local agency or trustee. Any post-retirement death benefit shall be determined by the mode of annuity payment used.

§ 806.548–553 [Reserved]

Subpart G—Private Retirement Plans—Equity Investments

§ 806.554 Policy.

It is the policy of HUD not to prohibit the use of equities in local agency retirement plans, provided that the investments are made consistent with this subpart.

§ 806.555 Definitions.

The term "equity investment plan" is used in this subpart to refer to a plan funded in part with common stocks and the term "variable annuity," to denote one form of retirement benefit available under a retirement plan. The terms used herein are elaborated upon below. These definitions shall apply when the context does not clearly indicate otherwise.

(a) *Equity investment plan* means a retirement plan providing a dual-funding arrangement. Under the plan, contributions may be allocated in part to an account, the assets of which will be invested primarily in common stocks (investment account) and in part to an account utilized in traditional insurance operations for fixed dollar annuities (fixed dollar account). At retirement, investment account assets may be converted to provide a fixed dollar annuity or a variable annuity.

(b) *Equity securities* mean common stocks and other investments which represent an ownership interest and the possibility of substantial appreciation or depreciation.

(c) *Fixed dollar account* means the account or procedure established to isolate reserves maintained for the purchase of fixed dollar annuities. Employee mandatory contributions shall be credited only to the fixed dollar account. Employer contributions may be credited to or transferred from this account.

(d) *Fixed dollar annuity* means an annuity which continues to be paid (usually throughout the lifetime of the annuitant) in a level amount, fixed and guaranteed by an insurance company.

(e) *Investment account* means the account or procedure under which employer past and future service contributions (and voluntary employee contributions, if permitted) are invested primarily in equity securities. Accounting may be accomplished through the use of special pooled accounts and may be expressed in terms of dollars or units as may be applicable in the contract.

(f) *Variable annuity* means a form of annuity providing a series of payments (usually for life), the amount of which will vary, up and down, from month to month (or other valuation period) to reflect the difference between an assumed investment result and the actual investment result, including dividends and market value changes. The investment fund will consist primarily of common stocks. The variable annuity may be offered under the same settlement options available for the fixed dollar annuity.

§ 806.556 Element of risk.

With a defined contribution plan the investment risk rests with the employee whose retirement benefits will increase or decrease relative to the value of his account balance at retirement. Since, under the defined contribution approach, the employee will be affected by investment performance, many local agency plans now allow the employee to direct to some degree the investment of agency contributions into equity or fixed income portfolios. In this way it is felt that the choice is the employee's and not the local agency's. If this latter procedure is adopted, an acknowledgement of risk shall be signed by each employee before selecting an investment media.

§ 806.557 Investment objective.

The principal investment objective should be the selection of investments from the view of a prudent investor concerned primarily with the long-range growth of capital in relation to the changing value of the dollar. An additional but secondary investment objective should be the production of current income. In order to achieve these objectives, emphasis should be placed on selecting the desirable proportions of the portfolio to be placed in various industries which are expected to grow at a faster rate than the economy as a whole and on the proper selection of the companies within those industries which are deemed capable of outperforming the others.

§ 806.558 Investment restrictions.

The following investment restrictions have been adopted to assure attainment of the investment objective. Substantial compliance with these criteria shall govern HUD approval of the investment account. Nothing in these investment restrictions is intended to preclude the exercise of managerial judgment by the funding agency in investment selection and timing of purchases or sales in recognition of shorter-term, cyclical business economic or market conditions. Responsibility for the management, safe keeping, control, and investment of the investment account shall be handled by a professional money manager, which may include a life insurance company, a corporate fiduciary such as an investment bank, or a regulated investment company such as a mutual fund. This delegation of investment responsibility will not relieve a local agency, trustee, or plan administrator from its responsibilities of monitoring the investment advisor's performance to determine if the advisor should be retained. The investment account shall be a pooled account under which funds from more than one source are commingled. The investment account shall be invested in accordance with the following restrictions which are considered to be fundamental policies:

(a) Investment account assets shall be invested in a portfolio of equity securities, mainly common stocks, diversified over a variety of industries and companies. In general, the portfolio may not concentrate more than 25 percent of its assets in any one industry nor more than 5 percent of its assets in any one company or issuer, except obligations of the United States Government and instrumentalities thereof.

(b) Real estate may not be purchased or sold as a principal activity. Mortgages are not in and of themselves considered as the purchase of real estate.

(c) No purchase of commodities or commodity contracts may be made.

(d) Loans may not be made except through the acquisition of bonds, debentures, or other evidences of indebtedness of a type customarily purchased by institutional investors, whether publicly distributed or not.

(e) Investment may not be made in the securities of a company for the purpose of exercising of management control. As such, not more than 10 percent of the voting securities of any one issuer may be acquired.

(f) Short sales of securities may not be made.

(g) Purchases may not be made on margin, except for such short-term credits as are necessary for the clearance of transactions.

(h) Borrowings may not be made except for emergency or temporary administrative purposes to an extent not exceeding that permitted by Section 18(f)(1) of the Investment Company Act of 1940.

§ 806.559 Mandatory employee contributions.

Mandatory employee contributions shall be allocated only to a fixed dollar account and used to purchase, either currently or at retirement, a fully insured conventional fixed dollar annuity.

§ 806.560 Voluntary employee contributions.

Voluntary employee contributions may be required to be allocated to a fixed dollar account or the employee may be given the option of electing to place these contributions into a fixed dollar account, investment account or some combination thereof.

§ 806.561 Employer contributions.

A defined contribution plan shall allow each participant to designate the percentage of local agency contributions to be allocated to the investment account, if such account is provided in the plan, and the remainder shall be allocated to the fixed dollar account. A participant shall have the opportunity, if desired, to change the percentage of the contribution which is to be allocated to each account. This opportunity should be offered on an annual basis. An employee may not be given the above election opportunity in a defined benefit plan. The investment discretion shall be left with the local agency.

§ 806.562 Transfer of employer contributions.

Employer contributions (and voluntary employee contributions, if pertinent) allocated to the investment account should be transferable to the companion fixed dollar account. No less than two transfers should be permitted a participant; at least one such transfer being before the normal retirement date and one being at the time of actual retirement. In addition, at actual retirement only, employer contributions previously allocated to the fixed dollar account may be transferable to the investment account for application as a variable annuity. These transfer arrangements would be subject to the insurer's usual requirements regarding allocation of premiums, minimum balances, and transfer charges, if any.

§ 806.563 Additional requirements.

Except as provided in this subpart, the equity investment plan shall comply with all criteria and procedure stipulated elsewhere in this part.

§ 806.564 Approval.

In addition to the documentation required for a private retirement plan under subparts E and F, the local agency shall submit a statement of the investment objectives and restrictions applicable to the investment account as discussed in sections 806.557-558. This statement shall be prepared and signed by a responsible official of the funding agency. Where available, a prospectus may be submitted in lieu of the statement.

§ 806.565-567 [Reserved]

Subpart H [Reserved]

§ 806.568-578 [Reserved]

Subpart I [Reserved]

§ 806.579-587 [Reserved]

Subpart J—Private Retirement Plans—Plan Comparison System

§ 806.588 Policy.

It is the policy of HUD not to require that any local agency invest retirement contributions in any one insurance carrier of master trust arrangement. As long as the local agency's plan meets other HUD requirements contained in this part, the selection of an insurance carrier as fund manager is left solely with the discretion of the local agency. It must be recognized, however, that the selection is of major importance. Most local agency retirement plans provide that a certain percentage of an employee's salary will be contributed to the plan each year. That money is then invested and increased with any gains and reduced by any expenses or losses incurred until retirement. When an employee reaches retirement, the account balance is then converted to a monthly annuity. That monthly annuity is therefore dependent upon:

(a) total contributions made to the plan,

(b) charges for expenses,

(c) level of investment gains or losses (including interest and dividend credits), and

(d) annuity purchase rates.

§ 806.589 Purpose.

This subpart describes a uniform method by which a local agency may compare, within broad parameters, one funding media (or insurance carrier plan) to another. The comparison can only be made between two defined contribution/money purchase plans. No attempt should be made to compare the relative values of defined benefit plans. If this approach is used in a uniform and consistent manner, a viable comparison may be made between competing insurance carriers and/or other trusteed plans at a single point in time.

§ 806.590 Rationale.

Typically, an annuity or insurance contract is composed of two elements—guaranteed cash values and projected dividend credits. The sum of these two values plus the value of a side fund, if any, will produce the total cash available at retirement. The selection of a funding media (see Section 806.513) may influence the ultimate cash available at retirement. This in turn may influence the monthly benefit available at retirement. Most insurance carriers guarantee a specific annuity purchase rate for the conversion of the lump sum cash into a monthly annuity. Insurance carriers normally have two annuity purchase rates—the guaranteed rate and the current annuity rate. The former is that which is guaranteed by the insurance contract. The latter is dependent upon the current long term investment yield and is normally substantially more favorable than the guaranteed rate. Upon reaching retirement an insurance carrier normally will automatically apply the more favorable of the two rates. As an example, assume at retirement a participant accumulated $50,000 and the guaranteed annuity purchase rate is $125 per $1.00 of annuity. It would cost $125 to buy each $1.00 of monthly annuity. The $50,000 would then provide $400 of monthly income. If the current rate was $110 per $1.00 of annuity, the $50,000 could buy $455 of monthly annuity. Consequently, there is a close interrelationship between the amount of cash available at retirement and the rate at which that cash is converted to a monthly annuity. Any comparison of contracts or investment accounts must attempt to take reasonably into account accumulations and annuity rates. This is what is illustrated in this subpart.

§ 806.591 Basic formula.

Frequently, insurance carrier annuity rates and asset accumulations are not consistently proportionate from one age to another. One insurance contract or investment media which favors younger employees might be less favorable to a local agency which has an older employee population than another contract more favorable to that older population base. As such, the comparison will necessitate the application of the mathematical formula illustrated below to every employee participating in the plans being evaluated. Each individual factor should then be multiplied by the participant's salary, in thousands, rounded to the nearest thousand. The results so determined should then be summed and divided by the number of participants. This rating system may not be applied to anyone who has attained the age of 65 or older.

$$F=(A/B)D$$

(a) F=Factor—This factor, once determined, will be multiplied by the employee's salary (expressed in thousands).

(b) A=Total cash available from all sources from the pension plan at retirement. Life insurance or annuity contract cash values, separate account assets (fixed account only), dividend credits and any other earnings (except assumed forfeitures) are to be accumulated assuming an annual contribution of $100 per year until retirement. Dividend credits or other interest earnings are projected on the basis of the current published rate being credited in the year in which the calculation is being made. Expense charges are charged against the annual contribution. The value of total cash available is multiplied by a factor of 1.083 if permanent insurance was used. This reflects the 1 percent contribution allowance for life insurance (see section 806.603). The cost of term insurance, if any, is not included in the calculation of the total cash available at retirement.

(c) B=The current single premium immediate annuity purchase rates offered by the carrier expressed as an amount necessary to purchase one dollar ($1) of monthly income on a life only basis.

(d) D=Discounting factor. This factor is necessary to determine the present value of the monthly annuities. The present value is the lump sum amount that would have to be deposited currently to produce the same amount of total cash available at retirement. The purpose of this discounting procedure is to reflect the age and sex distribution of the employee population of the local agency. The discounting factor is provided by age and sex in Appendix II.

§ 806.592 Application of formula.

Assume the following data:

(1) Name	(2) Age	(3) Sex	(4) Annual salary	(5) Cash at retirement per $100 annual contribution	(6) Plan with life insurance column (5) ×1.083	(7) Annuity [1] purchase rate per $1 a month
A	50	M	$26,424	$2,327	$2,520	$119.10
B	35	M	20,780	7,905	8,561	119.10
C	30	F	13,010	11,143	12,068	141.55
D	26	M	7,200	14,506	15,710	119.10
E	20	F	6,300	21,274	23,040	141.55

[1] Based upon the 1971 standard group annuity mortality table using interest rate of 5.5 pct, compounded annually.

Step (1).

WITHOUT LIFE INSURANCE DIVIDE COLUMN (5) BY COLUMN (7)

A	2,327 / 119.10	=19.54
B	7,905 / 119.10	=66.37
C	11,143 / 141.55	=78.72
D	14,506 / 119.10	=121.80
E	21,274 / 141.55	=150.29

WITH LIFE INSURANCE DIVIDE COLUMN (6) BY COLUMN (7)

A	2,520 / 119.10	=21.16
B	8,561 / 119.10	=71.88
C	12,068 / 141.55	=85.26
D	15,710 / 119.10	=131.91
E	23,040 / 141.55	=162.77

Step (2). Multiply above result by discount factor found in Appendix II.

WITHOUT LIFE INSURANCE

A	19.54	(.43765)	= 8.55
B	66.37	(.18915)	=12.55
C	78.72	(.19095)	=15.03
D	121.80	(.11596)	=14.12
E	150.29	(.11141)	=16.74

WITH LIFE INSURANCE

A	21.16	(.43765)	= 9.26
B	71.88	(.18915)	=13.60
C	85.26	(.19095)	=16.28
D	131.91	(.11596)	=15.30
E	162.77	(.11141)	=18.13

Step (3). Multiply the results obtained in step (2) by the participant's salary in thousands, rounded to the nearest thousand (i.e., a salary of $26,424 would be rounded to 26), sum the results obtained and divide by the number of participants.

WITHOUT LIFE INSURANCE

A	26	(8.55)=	222.30
B	21	(12.55)=	263.55
C	13	(15.03)=	195.39
D	7	(14.12)=	98.84
E	6	(16.74)=	100.44
			880.52

Rating=$\frac{880.52}{5}$=176.10

WITH LIFE INSURANCE

A	26	(9.26)=	240.76
B	21	(13.60)=	285.60
C	13	(16.28)=	211.64
D	7	(15.30)=	107.10
E	6	(18.13)=	108.78
			953.88

Rating=$\frac{953.88}{5}$=190.78

The decimal portion of the rating is not significant and may be disregarded when comparing ratings.

§ 806.593 Considerations used in the rating system.

(a) *Expenses.* Any expense charges and/or loadings incurred in the operation of the plan shall be reflected in the total cash available at retirement as described in section 806.591. Expenses to be recognized include such things as commissions, record keeping charges, service fees, consulting fees, investment charges and any other expenses incurred in the normal operation of the plan (see also section 806.516). Do not deduct any expense or premium for term insurance which may otherwise be included in the actual plan. Where permanent insurance is used, the 1.083 multiplication factor adjustment reflects the cost of the insurance element therby allowing the adjusted value to compare with other types of plans.

(b) *Services.* The services to be provided for the expenses determined above are highly subjective and no attempt has been made to compare there services or their relative values. Provision has been made for each carrier being rated to list the services it is prepared to perform for the expense loading included in the comparison and those additional services and charges available.

(c) *Dividend credits.* Due to the multitude of insurance carriers and the divergent types of contracts available, the term "dividend credits" is to be construed liberally. However, no projections on equity accounts may be used. Most "guaranteed" contracts will provide a fixed return or floor under which interest credits may not go. Interest credits in excess of this floor are not guaranteed but to some extent are normally expected. Insurance carriers, at least annually, publish the current additional interest (dividends) currently being credited under these types of contracts. It is the total current rate which may be used to project total cash available at retirement (age 65) per $100 annual contribution. If permanent insurance and/or retirement annuities are being used along with a side fund, the total cash available from both sources are combined in determining the total cash available. Some plans will use dividend credits to increase cash values. This is an acceptable approach. Another acceptable approach would be a situation where the plan was split funded (assuming 40 percent to life insurance and 60 percent to a side fund). The dividend credits would then go to reduce the life insurance premium, thus freeing up more of the $100 annual contribution to be invested in a higher interest bearing side fund.

(d) *Single premium annuity rates.* These rates are available from all insurance carriers on a current basis. All quotations shall assume a straight life monthly annuity and shall be expressed as the net cost to purchase $1.00 of montly income on a life only basis. These rates are not necessarily fixed and may fluctuate from year to year or month to month. All carriers wishing to have standard plan designation pursuant to section 806.506 shall notify HUD of the single premium annuity rate as of April 1 and October 1 of each year. If rates change more frequently, additional notifications not more frequently than nonthly will be accepted.

(e) *Qualified status.* All annuity rates and interest credits shall be based upon the assumption the plan will qualify under Section 401(a) of the Internal Revenue Code.

(f) *Waiver of premium.* Due to the fact that a disability benefit arising out of a qualified retirement plan must be considered incidental and that some plans may offer such benefits and others may not, all comparisons for the purpses of this section shall assume that no waiver of premium is offered.

(g) *Premium taxes.* All computations and annuity rates shall assume that no State premium taxes will be paid and that all comparisons will be done on a pre-State premium tax basis.

§ 806.594 Comparison of plans.

The rating system described in this subpart should be applied against all insurance carriers or other plan sponsors the local agency is considering in the adoption or continuation of a retirement plan. This system may be used to compare one or more proposed plans against other proposed plans or an existing plan. Calculations may be prepared by the soliciting insurance agent(s), the local agency (using data supplied by the plan sponsor/insurance carrier), or on request by HUD.

In this latter regard, HUD will provide technical assistance in the calculation of comparison ratings. A local agency may request that HUD prepare up to three such comparisons for that local agency. The local agency shall designate which plan sponsors/insurance carriers they want included in the comparison and supply to HUD the necessary census of employees which would include name or employee number, sex, date of birth and salary. For each plan to be rated, the local agency shall supply the information specified in section 806.591(c)-(d) for those employees to be included in the plan. In the event a plan to be compared is classified as a standard plan and the funding method is the same as those previously supplied to HUD pursuant to section 806.596, then only the plan control number or name need be designated. If some other result would be produced, the information in section 806.591(c)-(d) shall be supplied.

§ 806.595 Evaluation of plan ratings.

The value of a plan's rating is not the sole criteria to be used in ranking those plans evaluated by order of preference. First, it must be recognized that the rating system uses assumptions that may not be valid in the long term. Current dividend credits, as used in the projection, may not be realized; actual credits may fluctuate, up or down. For this reason, the numerical value of the plan's rating should be viewed as being relative rather than specific, i.e., a variation of 5 to 10 percent between the ratings of two plans may not be considered conclusive. However, a variation of 10 to 15 percent or more could be viewed as significant. The percentage variation between plans is determined by dividing a higher plan's rating by the lowest plan's rating, subtracting one, and multiplying by 100. This process would be applied to all plans if more than two comparisons are being made. Second, the rating value of a plan, no matter what the spread may be, becomes meaningless if that plan cannot be serviced and maintained adequately. The quality of service that is needed and that which can be provided it not reflected in the comparison rating system except to the extent that expenses for services may be charged, i.e., the nature, extent, and quality of service are not shown. In this respect, it is essential to take into account that what may appear to be a superior plan is not necessarily a practical choice. In seeking a decision, the local agency must evaluate its particular service needs and with these when reaching a decision. One significant factor to be weighed is the necessity or ability of the insurance agency or administrator to service the plan effectively for the fee or commission provided by the plan. These may be a necessity for personalized service to explain the plan to participants and enroll them. Furthermore, administrative services might be necessary to provide information, reports, claim settlements, etc., on a timely basis. With respect to service, emphasis beyond what is reasonable or necessary is a waste of resources which could produce greater benefits while failure to obtain satisfactory service could result in dissatisfaction. Thus, the decision processs must weigh not only the tangible values indicated by the plan comparison ratings but also must carefully weigh the intangible elements that are involved.

§ 806.596 Standard plan designation.

In order to be designated a standard plan as defined in section 806.506, an insurance carrier or other plan sponsor shall supply to HUD the information necessary to complete the comparison outlined in this subpart on a form acceptable by HUD. A suggested form is illustrated in Appendix III. With this information, upon request by a local agency, HUD will calculate the standard plan's rating unless the standard plan's agent or sponsor desires to provide the calculation personally. Thereafter, this form shall be submitted to HUD by the end of April and September of each year and shall contain requested information as of April 1 and September 1 of each year. If from one submission date to another there has been no change in the data previously supplied, new data need not be submitted provided that is so indicated on the form. More frequent submissions of updated information will be accepted but are not required. Form(s) applicable to a standard plan shall be submitted and updated even though the insurer or agent will prepare the calculation directly.

§ 806.597-599 [Reserved]

Subpart K—Life Insurance

§ 806.601 Policy.

A local agency may provide the insurance coverage within the cost and coverage limitations stated below:

(a) *Public plan.* Life insurance may be provided under a plan established by a governmental body provided local agency contributions may not exceed the employee/employer cost basis applicable to other governmental participants. There is no limitation on the amount of life insurance benefits which is set by the public plan. To the extent that life insurance is not provided under any public plan which the local agency participates in, the local agency may provide life insurance coverage as provided in the following paragraphs.

(b) *Private plan.* Life insurance may be include in combination with another private benefit plan or may be provided as an independent plan, subject to the limitations stated in this subpart.

§ 806.602 Definition.

As used herein, "life insurance" means that form of death benefit provided through an individual or group policy of term or permanent insurance. In this respect, the following forms of death benefits are not considered to be life insurance: (a) refunds of employees and employer contributions to a retirement plan, (b) the cash surrender value of retirement annuity policies, (c) proceeds from an accidental death and dismemberment policy, (d) incidental lump-sum payments primarily intended for settlement of expenses for final illness and burial, and (e) subsidiary life insurance included as part of a "package" benefit plan, usually health insurance. Generally, life insurance included as part of a package in excess of $2,500 will not be considered as incidental or subsidiary.

§ 806.603 General limitations.

Life insurance coverage may be provided under any one of the following four sub-classifications provided the criteria for that sub-classification is met. Not more than one sub-classification may be used to provided such benefits. If under sections 806.603(b)(d), an employee is totally uninsurable under the insurance company's rules, the contribution for life insurance shall nonetheless be allocated to increase an employee's retirement benefit.

(a) *Term insurance separate from a retirement plan.* (1) Amount. The maximum amount of term life insurance which a local agency may maintain in force on the life of an employee pursuant to a plan not associated with a retirement plan shall be one and one-half (1.5) times the employee's total annual compensation.

(2) Contribution. The local agency's contribution applicable to a term life insurance program described in section 806.603(a)(1) above may not exceed 50 percent of an individual's applicable premium for the amount of coverage provided. The employee's contribution may not be less than the local agency's contribution. No maximum dollar cost or percentage of compensation cost limitation may be placed on this coverage.

(3) Premium calculation. Premiums relative to a term insurance contract may be calculated on an individual or group averaging basis. Such term insurance premiums may be paid in association with any other form of approvable employee benefit plans (except as provided in section 806.603(b)) pro-

vided the above conditions of this section 806.603(a) are met.

(b) *Term insurance as part of a retirement plan.* (1) Amount. The maximum amount of term life insurance which a local agency may maintain in force on the life of an employee pursuant to a plan associated with a retirement plan shall be one and one-half (1.5) times annual compensation (as defined by the retirement plan). The minimum amount of such life insurance coverage shall be three-quarters of one percent (0.75%) of annual compensation (as defined by the retirement plan).

(2) Contribution. Employee and local agency contributions to a retirement plan providing term life insurance coverage may be increased by up to one-half percent (0.5%), respectively, of annual compensation (as defined by the retirement plan). The total amount of increase, however, must be borne equally by the employee and the local agency. Furthermore, the local agency's portion of such increase may not exceed 25 percent of the total local agency contribution to the retirement plan. This maximum 1 percent combined contribution is intended to pay the cost of the term life insurance coverage. The plan may presume that the mandatory employee contribution will first be applied to pay all applicable life insurance premiums.

(3) Premium calculations. Premiums relative to a term insurance contract may be calculated on an individual or group averaging basis.

(c) *Permanent whole life insurance as part of a retirement plan.* (1) Amount. There shall be no maximum or minimum amount of whole life insurance which a local agency must maintain in force on the life of an employee pursuant to a plan associated with a retirement plan. However, if a whole life contract is used no more than 40 percent and no less than 10 percent of the total local agency and mandatory employee contributions to the plan may be used for the purpose of paying the premiums on such coverage.

(2) Contribution. If whole life insurance is used to provide an insured death benefit, the local agency may increase its contribution to the plan by an additional amount up to one-half of one percent (0.5%) of the participating employee's annual compensation (as defined by the plan). Any increased contribution above shall be matched by a similar increase required of participating employees and included as part of their mandatory contributions to the plan. The plan may presume that the mandatory employee contribution will first be applied to pay all applicable life insurance premiums.

(d) *Retirement income insurance contract as part of a retirement plan.* (1) Amount. There shall be no maximum or minimum amount of life insurance which a local agency must maintain in force on the life of an employee pursuant to a plan associated with a retirement plan if such life insurance protection is provided through a retirement income or similar type insurance contract. A retirement income contract is one which provides as a death benefit $1,000, or the reserve, if greater, for each $10 per month of guaranteed life annuity at retirement.

(2) Contribution. The additional contribution to cover the cost of this benefit would be the same as section 806.603(c)(2). Furthermore, the entire local agency contribution and mandatory employee contribution may be applied to pay the premiums of these contracts. However, at leasst 25 percent of local agency and mandatory employee contributions shall be applied to the purchase of these coverages. The plan may presume that the mandatory employee contribution will first be applied to pay all applicable life insurance premiums.

§ 806.604 Special type policies.

Certain types of policies supply coverage for risks or hazards of a special or limited nature which are inappropriate for general applicability. Such forms of benefits may be provided only to the extent that the premiums therefor are separable and paid exclusively by the employee. Such benefits shall be optional. Examples of special type policies are:

(a) Aviation accident insurance.
(b) Key-man insurance.
(c) Business travel accident policies.
(d) Dependent life insurance.

§ 806.605 Approval.

The following information relative to a private life insurance plan shall be submitted to the appropriate HUD office:

(a) A specimen copy of the application and policy or contract which shall include all applicable premium and benefit schedules.

(b) A list of all present employees who would be eligible for such coverage including for each the salary, age, sex, amount of coverage, and premium.

Subpart L—Health Insurance

§ 806.701 Policy.

It is the desire of HUD to encourage, but not require, that local agencies participate in a public health insurance plan if available on a voluntary basis because more often than not premiums of public plans are very reasonable in relation to benefits. Each local agency should examine the public plan as if it were a private plan to determine its appropriateness.

§ 806.702 Public plan.

When a local agency is required or permitted to participate in a State, municipal or other local government public health insurance plan, local agency contributions may not exceed the employer contribution basis applicable to other governmental participants.

§ 806.703 Comparable private plan.

When a local agency is not permitted to participate in a State, municipal, or other local government public health insurance plan, it may establish a comparable private health insurance plan. In this event, the types and extent of coverage, as well as the employer contribution basis, may not exceed, but may be less than, those applicable to the public plan. A comparable plan may not be established where the local agency may voluntarily participate in a public plan; rather the comparable plan concept can be achieved directly by participating in the public plan.

§ 806.704 Health maintenance organizations.

According to the Health Maintenance Organization Act of 1973 and pursuant regulations, employers with an average of 25 employees must offer them the option of participating in a "qualified" health maintenance organization (HMO) and plan. While it apparently is not mandatory for a governmental entity to comply with this act, a local agency will be permitted to voluntarily agree to offer the option to its employees. Any exclusions or limitations stipulated in sections 806.706–708 need not apply to coverage provided under an HMO arrangement.

§ 806.705 Autonomous private plan.

In lieu of entering a public plan or where a public plan is not available, a local agency may establish an autonomous private health insurance plan under the following conditions:

(a) *Contributions.* Local agency contributions may not exceed 100 percent of the premium rate for an employee alone or 60 percent of the premium rate(s) for an employee plus one or more eligible dependents. The local agency may not contribute on behalf of any employee in a nonpay status or who is not classified by the local agency as a regular employee. Experience credits (dividends) shall either be applied to reduce the next premium payable or shall be held by the insurer to reduce future premiums.

(b) *Types of benefits.* The private health plan may include any of the general types of benefits described below, subject to the conditions stated in this subpart.

(1) Basic medical expense benefits including:

(i) Hospital expense benefits (including outpatient treatment of injuries and other emergencies).

(ii) Surgical expense benefits (including professional administration of anesthesia).

(iii) Physician expense benefits (in-hospital only).

(iv) Diagnostic X-ray and laboratory expense benefits.

(v) Radiation therapy.

(2) Major medical expense benefits supplement basic medical expense benefits and also cover other medical expenses, such as out-of-hospital physician expenses, private duty nursing (R.N.), prescription drugs and medicines, artificial prosthetic appliances, etc.

(3) Comprehensive medical expense benefits cover a broad spectrum of medical expenses, including those mentioned in the preceding sections 806.705(b)(1)-(2).

(4) Maternity expense benefits may be provided in conjunction with basic medical expense benefits, major medical expense benefits or comprehensive medical expense benefits, and cover hospital and obstetrical expenses. The level of benefits should approximate the prevailing level of maternity benefits under local insured or service plans.

(5) Dental expense benefits may be provided if a major medical or comprehensive medical expense benefit plan also exists. (See section 806.708 for details.)

(c) *Enrollment.* Any regular employee may enroll in an approved health plan either as an employee or for employee and eligible dependents. If any employee's spouse is employed by the same local agency, either spouse (but not both) may enroll for family coverage, but no person may be enrolled both as an employee and as a dependent. Family enrollment may be defined to include unmarried dependent children who have not attained age 19 (age 25 if classified as a regular, full-time student), and unmarried dependent children regardless of age who are incapable of self-support because of physical or mental incapacity incurred before age 19 (age 25 if covered as a student).

§ 806.706 Limitations required.

Substantial compliance with the following required limitations shall govern HUD approval.

(a) All major medical expense benefits and comprehensive medical expense benefits shall be subject to a deductible of at least $100 and co-insurance of up to 80 percent on the first $2,500 of covered expenses. The plan may then pay 100 percent of covered expenses in excess of $2,500.

(b) All medical expense plans shall contain the standard "Coordination of Benefits" provision if provided on a group basis. Exceptionally small agencies which may not qualify for group coverage may use individual health policies not containing a coordination of benefits provision.

(c) The plan may not cover the expenses of optional private accommodations to the extent they exceed the expenses of semi-private accommodations.

(d) The expenses of a convalescent facility may be covered if confinement follows hospitalization and is certified by the attending physician to be medically necessary, but only if the medical prognosis is that the confinement will reduce the individual's disability to permit living outside an institution providing medical care. Benefits should not exceed 50 percent of the daily benefit for hospitalization and the benefit period should not exceed 60 days.

(e) Medical expenses incurred in the treatment of mental and nervous disorders outside a hospital may be covered only under a major medical or a comprehensive medical plan. The benefit may not exceed 50 percent of the physician's charge and not more than $1,000 in benefits may be paid in a calendar year.

§ 806.707 Exclusions.

Expenses incurred for the following types of treatment or care shall be excluded from any plan supported by employer contributions. Coverage of any of these excluded expenses may be purchased separately but only if the employee pays the full cost. The plan may contain exclusions in addition to those listed below:

(a) Occupational injury or disease covered by Workmen's Compensation or similar law;

(b) Cosmetic surgery, except that required for medical reasons or to repair injuries caused by an accident;

(c) Custodial care;

(d) Eye glasses and contact lenses or the examination for them except as required by ocular surgery or injury;

(e) Routine or periodic physical examinations;

(f) Speech, occupational, recreational or milieu therapy or other forms of nonmedical self-care or self-help training;

(g) Hearing aids or examinations, whether or not prescribed;

(h) Specified disease riders or policies; and

(i) Integrated major medical insurance providing coverage of deductibles, co-insurance amounts, etc.

§ 806.708 Dental expense benefit.

Benefits for dental care or treatment may be obtained only if a major medical or comprehensive medical plan also exists. However, any dental benefit so provided would be in addition to coverage otherwise provided by the local agency's medical plan. The extent of participation in a major medical or comprehensive medical plan shall govern the extent of participation in the dental plan. Substantial compliance with the following limitations shall govern HUD approval.

(a) *Coverage.* Due to the wide variety of dental plans offered by insurance carriers and the difference in objectives of various local agencies, it is the intent of HUD not to place any limitations on the breadth of coverage under this section, however, the benefits so offered shall not go beyond the following definitions of services:

(1) Diagnostic: Procedures to assist the dentist in evaluating and identifying existing conditions and the dental care required. This includes oral examinations, bitewing/full-mouth X-rays, consultations and laboratory examinations.

(2) Endodontics: The specialty of dental science that deals with procedures for the treatment of diseases of the pulp chamber and pulp canals (root canal therapy).

(3) Oral surgery: The procedures with include extractions as well as other surgery, including pre-operative and post-operative care.

(4) Orthodontics: Treatment for the proper alignment of teeth. This includes straightening of crooked, crowded or protruding teeth. This benefit is limited to children covered as dependents.

(5) Periodontics: The examination, diagonosis and treatment of diseases of the tissues supporting the teeth (gums).

(6) Preventive: Procedures to prevent or minimize the occurrence of oral disease. This includes prophylaxis (cleaning, polishing and scaling of teeth), topical application of flouride solutions and space maintainers.

(7) Prosthodontics: The procedures for the construction, placement, insertion and repair of natural teeth by artificial devices. This includes bridges, partial and complete dentures.

(8) Filling: Filling of teeth to include amalgam, porcelain and other synthetic materials.

(9) Restorative: Pertains specficially to repair and reconstruction of natural teeth, including gold restorations, crowns, and jackets.

(10) Other services: Includes emergency care, general anesthesia, drugs and special consultation.

(b) *Benefit limitations.* Although no other limitations are placed on the design of the benefits that may be provided, no dental plan adopted pursuant to this section may provide for the payment of more than $500 in dental expense benefits in any one calendar year per covered member.

(c) *Contribution limitations.* A local agency may pay up to 100 percent of the premium of the single employee or 60 percent of family benefits under this section.

§ 806.709 Medicare and medicare supplements.

A local agency may establish a supplement to Medicare within its own health care plan and/or through an HMO for active employees. The cost of employee only coverage under the supplement to Medicare may be borne by the local agency. In the event an employee covered by Medicare is covered by a medicare supplement also elects to cover his/her dependents under the plan, the total local agency contribution may not exceed the contribution rate applicable to other employees. If the cost for employee only medicare supplement coverage is less than the local agency's contribution for health care benefits provided to other employees who are not eligible for Medicare, the local agency's contribution must be limited to a proportionate expenditure.

§ 806.710 Individual policies.

Where a local agency would have too few eligible employees to obtain a group policy, it may nonetheless contribute on a nondiscriminatory basis toware one-half (50%) of the cost of an individual policy obtained by the employee personally, provided such policy conforms to the provisions of this subpart.

§ 806.711 Coverage while on leave of absence.

The plan may provide that an employee who is granted a leave of absence without pay may have individual coverage and the coverage of any eligible family members continued for the duration of the leave of absence upon application, but only upon the employee's assuming payment of the contributions otherwise required of the employer. This section would also be applicable in the event the employee was not at work due to a collective bargaining dispute.

§ 806.712 Life insurance.

Life insurance may be provide in combination with a public or private health insurance plan pursuant to subpart K. In some cases an insurance company will require that a small amount of life insurance must be provided along with its health policy. In such case, the cost of subsidiary life insurance, not in excess of $2,500, may be included in the premium even though the local agency is providing the maximum level of life insurance under another employee benefit plan.

§ 806.713 Approval.

Health insurance plans shall be submitted to the appropriate HUD office for technical review and approval. The following data shall be submitted in this respect:

(a) For public plans, satisfactory evidence that the local agency is eligible to enter the plan.

(b) For comparable private plans, satisfactory evidence that the local agency is not eligible to participate in a public plan; a copy of the proposed comparable private plan including applicable premium and benefit schedules; and a copy of the public plan's premium and benefit schedules for comparative purposes, including the employee-employer sharing formula applicable thereto.

(c) For autonomous private plans; a copy of the proposed application, and the policy or contract including applicable premium and benefit schedules.

(d) For HMO plans, a copy of the proposed application, certification that the organization is a qualified entity, and the policy or contract including applicable premium and benefit schedules.

Subpart M—Miscellaneous Benefit Plans

§ 806.801 Policy.

To the extent that they are not provided under any public plan in which the local agency participates, a local agency may provide the following benefit plans subject to the cost and coverage limitations stated in this subpart.

§ 806.802 Disability income benefits.

Disability income benefits (DIB) are periodic payments, usually on a monthly basis, to replace lost earnings due to sickness or injury, the following provisions shall apply.

(a) *Definition.* The definition of disability shall conform to the standard definition customarily used by the insurance company.

(b) *Waiver of premium.* The plan may provide for waiver of DIB premiums while disabled, but may not provide for supplemental pension credits or contributions (see section 806.543).

(c) *Individual policies.* Where a local agency would have too few eligible or participating employees to obtain a group policy, it may nonetheless contribute on a nondiscriminatory basis toward the cost of an individual DIB policy in accordance with section 806.802(d).

(d) *Contributions.* The employer contribution may not exceed the lesser of (1) one-half percent (0.5%) of an employee's regular compensation or (2) 50 percent of an individual's applicable premium. The employee's contribution may not be less than the employer's contribution. If an employee is totally and permanently disabled, as defined in the plan, and does not have sufficient accumulated leave (sick, annual or otherwise) to carry him through the qualifying period for the receipt of benefits, the local agency is authorized to continue to pay the employee's and employer's portion of the premium from the time the leave benefits cease and benefit payments begin. This special contribution provision is not applicable for a period of time greater than one year after the date of disability.

§ 806.803 Accidental death and dismemberment.

Accidental death and dismemberment coverage (AD&D) provides indemnity for loss of life, limbs, or sight resulting from accidental bodily injury. The AD&D policy may provide accident coverage off the job or at all times. The AD&D death benefit or principal sum for any participating employee may not exceed that amount which can be purchased by a total per employee premium of $3.00 per month of which the employe shall pay 50 percent and the local agency shall pay the other 50 percent. The premium shall either (a) be deducted from the basic contribution attributable to a private retirement and/or life insurance plan, or (b) be integrated with a private health insurance or DIB plan's premium on a matching contribution basis. AD&D coverage for dependents may be provided only to the extent that the premiums thereof are paid exclusively by the employee.

§ 806.804 Approval.

The following information relative to a miscellaneous benefit plan shall be submitted to the appropriate HUD office: a copy of the application and policy or contract which shall include all pertinent premium and benefit schedules.

Subpart N [Reserved]

Subpart O—Appendices

[Appendices I and IV, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD Employee Benefit Plans Handbooks HM 7217.2 REV-1 and 7401.5 REV-1.]

APPENDIX II—DISCOUNTING FACTORS [1]

Age	Male	Female
18	.08382	.11141
19	.08382	.11141
20	.08382	.11141
21	.08847	.11750
22	.09339	.12400
23	.09858	.13093
24	.10406	.13817
25	.10984	.14582
26	.11590	.15389
27	.12241	.16241
28	.12924	.17141

APPENDIX II—DISCOUNTING FACTORS [1] Continued

Age	Male	Female
29	.13644	.18092
30	.14406	.19095
31	.15210	.20155
32	.16061	.21274
33	.16959	.22456
34	.17910	.23704
35	.18915	.25023
36	.19977	.26417
37	.21101	.27889
38	.22291	.29445
39	.23550	.31090
40	.24883	.32828
41	.26294	.34666
42	.27790	.36610
43	.29377	.38666
44	.31063	.40841
45	.32856	.43143
46	.34765	.45579
47	.36799	.48159
48	.38969	.50892
49	.41287	.53788
50	.43765	.56858
51	.46418	.60115
52	.49259	.63569
53	.52308	.67234
54	.55581	.71127
55	.59099	.75264
56	.62885	.79662
57	.66964	.84345
58	.71364	.89337
59	.76117	.94666
60	.81273	1.00364
61	.86883	1.06469
62	.93004	1.13020
63	.99701	1.20065
64	1.07049	1.27653

[1] Based upon the 1971 Standard Group Annuity Mortality Table using an interest rate of 5.5 percent compounded annually.

APPENDIX III—SAMPLE FORM

1. Plan Name or Control Number———
Date ———
2. Plan Sponsor/Insurer ———
3. Date as of which information is being supplied
April 1, 19—— September 1, 19——
4. Single premium immediate annuity purchase rate assuming payment commencement date at age 65 and a straight life annuity. Express rate as cost per $1.00 of monthly annuity. (If no change from prior submissions, check here ☐).
Males $——— Females $———
5. Total cash available at retirement assuming annual contributions of $100 (contributed at the beginning of the year) and accumulated to age 65 for the following ages (assuming all birthdates occur on January 1): (If no change from prior submissions check here ☐).

18 $———
19 $———
20 $———
21 $———
22 $———
23 $———
24 $———
25 $———
26 $———
27 $———
28 $———
29 $———
30 $———
31 $———
32 $———
33 $———
34 $———
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36 $———
37 $———
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39 $———
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43 $———
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54 $———
55 $———
56 $———
57 $———
58 $———
59 $———
60 $———
61 $———
62 $———
63 $———
64 $———

6. General explanation of the basis upon which the numbers in item (5) above were developed, including the types of investment vehicles, the split between those investment vehicles, if any, the rate of the projected return and the expense loading built into the program. If any of the following services are to be provided for the expense loading built into the plan, please indicate below. If these services are not included, please indicate their approximate annual cost if available.

	Included	Not Included	Approx. Cost [1]
(a) Cost of Investment			$———
(b) Consulting Related to Plan Administration			$———
(c) Record Keeping			$———
(d) Preparation of Tax Data (P. S. 58 Rates)			$———
(e) Preparation of Annual Reports (5500/5500-C)			$———
(f) Preparation of Plan Summary Booklets			$———
(g) Preparation of Annual Benefits Statements			$———
(h) Cost of IRS Qualification			$———
(i) Other (specify)			$———

[1] Approximate annual cost may be expressed in dollars per $100 of contribution or as a percentage of the contribution. Use additional space to expand upon the services provided if desired. I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ———
Signature of Preparer———
Title ———

AUTHORITY: United States Housing Act of 1937, (42 U.S.C. 1437 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Signed at Washington, D.C., this 7th day of February, 1979.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-4712 Filed 2-13-79; 8:45 am]

Federal Register

WEDNESDAY, FEBRUARY 14, 1979

PART IV

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

RECORDATION OF UNPATENTED MINING CLAIMS

Simplification and Clarification Procedures

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2441]

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

AMENDMENTS

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: On January 27, 1977 (42 FR 5298), the Department of the Interior published regulations implementing section 314 of the Federal Land Policy and Management Act of 1976 requiring the recordation of unpatented mining claims located on the public lands. Based on comments and suggestions received since the implementation of the regulations, the Department proposed amendments to the present regulations to simplify and clarify procedures for the recordation of unpatented mining claims. This final rule implements those changes.

DATE: The rule will be effective March 16, 1979.

ADDRESS: Director (723), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION, CONTACT: Mr. Bob Anderson, 202-343-7722.

SUPPLEMENTARY INFORMATION: The preamble to the final rulemaking issued to implement section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), requiring the recordation of unpatented mining claims located on the public lands stated that the practical effects of the implementation of the regulations would be observed and any changes found necessary to improve the recordation procedure would be made. A proposed rulemaking carrying out that pledge and making changes in the recordation regulations was published in the FEDERAL REGISTER on April 10, 1978, and provided a 60 day comment period.

As a result of the publication of the proposed rulemaking, the Department of the Interior received 19 comments. Seven of the comments came from companies, seven from mining associations or their attorneys, one from a local government, and four from individuals, with one of the comments being signed by four individuals.

Several of the comments raised a general objection to the principle of having to record unpatented mining claims with the Federal Government. The regulations carry out a mandate of Congress. In carrying out the mandate, the Department has made every effort to keep the requirements on the public to a minimum, consistent with the law.

Several comments were offered on proposed amendments to the definitions in the regulations. Specific comments were made on the amended definition of the term "owner". One comment suggested that the rulemaking should make it clear that failure to file the names of all of the owners of a claim would not be reason for rejecting the recording. The regulations make that point clear. The Department's efforts are aimed at obtaining and having on record the names of all or as many of the claim owners as possible. The only condition imposed for failing to list an owner is that provided for in § 3833.5 of the regulations, no notice if a contest is pursued. A similar comment wanted a recorded claim to be valid if all of the owners are not identified in the documents filed for recordation purposes. There is nothing in the regulations or amendments that makes the recordation invalid if all of the owners are not listed.

Another comment on the definition of "owner" recommended that the term be tied to locator. This suggestion is not being adopted because the term "owner" is more appropriate. The locator may be the person who files in most cases, but for those claims located on or before October 21, 1976, there is a good possibility that the locator is no longer connected with the claim. A locator falls within the definition of "owner" as it is set out in the rulemaking.

Another comment on the definition of "owner" recommended that the term "person" be defined. The word "person" as used in the definition of "owner" appears to be sufficiently clear so that it need not be defined.

A change was made in the definition of the term "proper BLM office" to make it clear that the concern is the claim or site, not the lands in which they are located.

A comment on the term "date of location" suggested that the definition make it clear that the date of location is established by State law and not these regulations. The proposed amendment was designed to allow the claimant the broadest possible latitude in recording his claim. It is clear that the proposed amendment creates further problems and we have therefore, adopted the suggested comment and simply state that the "date of location" is that determined by the State law in the jurisdiction where the claim is located.

Another comment on the "date of location" suggested that the definition be changed to reflect the date of recording rather than the date of location. The Federal Land Policy and Management Act following the mining law and ties the date of location to the time of location of the claim. The regulations follow that concept.

Comments were offered on the amendment to the definition of "copy of the official record of the notice or certificate of location". One comment requested that the document filed with the Bureau of Land Management be the document filed with the local recording agency for the claim. This provision was included in the proposed amendment because experience indicates that there is not sufficient time in most jurisdictions to record with the local agency, get a certified copy of the recorded instrument and file it with the Bureau of Land Management. The suggested change would only complicate the problem that the amendment was designed to relieve.

A second comment wanted the amendment changed to make it clear that an acceptable document was not only one that had been filed but one that will be filed. This change is in keeping with the intent of the amendments in the proposed rulemaking and it was adopted.

Two changes that were made after a careful study of the amendment were the addition of the word "legible" in two places and the phrase, "name or other pertinent fact" in one place. The word "legible" was inserted to make it clear that the copy of the document filed must be legible or it is useless as a document of recordation. The experience of the Bureau of Land Management has been that some of the documents filed have been useless because they could not be read. The phrase ", name or other pertinent fact" was inserted in the last sentence of the definition to further clarify the circumstances when an amendment needs to be filed with the Bureau of Land Management. Finally, the typographical error in the second line of the amendment was corrected by substituting the word "or" for "of".

Two comments were offered on § 3833.1-2(a). One dealt with the question of "agency" and was not adopted. The other comment wanted the addition of the words "or will be filed". While these words have been made part of other sections of the amendment, they were not considered appropriate for this section and were not

added. An editorial change was made in the section to make it easier to read.

Several comments were directed to § 3833.1-2(c). It was suggested that the section should be made applicable to mill and tunnel sites as well as claims. This suggestion was adopted and the phrase "or site" was added in several places in the section. Another comment raised the problem of tying a claim to a quarter section especially on unsurveyed lands. In recognition of this difficulty, the section has been changed to make it apply to the extent possible.

A comment on § 3833.1-2(c)(6) felt that the restrictions on the type of map to be furnished were too restrictive. We agree and have changed the section to remove the authority of the authorized officer to approve the map, but do require the use of U.S.G.S. topographic maps. Another comment was raised about the inclusion of groups of claims in § 3833.1-2(c)(6). The provision has been rewritten to make it clear that more than one claim or site could be shown on a single map or described in a single narrative or sketch if located in the same general area. The new language is clearer and carries out the intent of the rulemaking.

Finally, the section was amended to add a provision allowing the furnishing of an approved mineral survey in lieu of other requirements of the section. It was determined that the mineral survey contained all of the information needed and will be accepted if a claimant offers it for filing.

The question of the service fee was raised once again in several comments. As pointed out in earlier rulemakings on this subject, the fee is imposed under the authority of section 304 of the Federal Land Policy and Management Act. To eliminate uncertainty as to when the fee is to be paid, the phrase "one time" has been inserted in the section. This change makes it clear that a one time payment of the fee is all that is required for the recordation of a single claim. If, however, the claim is relocated or any other action taken creating a new claim, a new fee is required.

Several comments were received relative to § 3833.1-3. Most of the comments raised issue with the provision that a filed patent application is deemed as compliance with the recordation requirements. This provision was put in the regulations to relieve the mining claimant who had filed a patent application of having to take any additional steps to record his claim since the patent application normally contains all required information. As was pointed out in the comments, this action would require a patent applicant to file evidence of assessment work or notice of intention to hold the claim or it would become void. This could have an adverse impact on a mining claimant who, even though he had filed a patent application on a claim located prior to October 21, 1976, decided to await a determination on that patent application before recording. If action were taken to grant the patent prior to the filing deadline of October 1979, recording would not be necessary. If, however, no action were taken, recording could be accomplished just prior to the October 1979 deadline. This would keep the claimant from having to file evidence of assessment work with the Department. The result of the regulations as presently written removes this option and puts the claimant in a position of having to file evidence of assessment work with the Department. Without notice of a pending patent application being deemed compliance with the recording requirements, the claimant might not be aware of it and might find his claim voided by his failure to file necessary papers. To clarify this situation, the regulations have been amended to provide that the claimant will be notified that his pending patent application fulfills the recording requirements and as a result of the notification the claimant is required to file evidence of assessment work. This change will require notification to the 300 or so individuals who had patent applications pending on October 21, 1976, that their claims have been recorded in accordance with the recording provisions and they are required to file evidence of assessment work or a notice of intent after the date of the notification.

Another suggestion adopted makes § 3833.1-3 clearer by setting out in more precise language what must be contained in a patent application for it to be deemed as meeting the recordation requirements.

In response to several comments and in keeping with other changes in the rulemaking, § 3833.2-1 was amended to clarify the reference to December 31. One comment pointed out that the statute did not require the annual filing of a notice of intent to hold a mill or tunnel site and the requirement should be deleted. However, the section is needed so the Bureau can keep informed as to the status of sites and has been retained.

In response to a general comment made on the rulemaking concerning documents that will be filed, § 3833.2-2(a) was amended to insert the phrase "or will be". The word "legible" has also been inserted in this section and section (b) to make it clear that the copy must be a legible copy. We also rewrote paragraph (1) of § 3833(a) to make it clear that the furnishing of the serial number assigned to a claim or site would fulfill the requirement of the act for a full description because the file already contains a description. Of course, if the serial number is not available, the full description will need to be furnished. This change was also made in § 3833.2-2(a)(1). These changes were made in response to comments on this point.

It was pointed out in the comments that the wording of §§ 3833.2-2 and 3833.2-3 indicates that an affidavit of assessment or notice of intent will be limited to contiguous claims and suggested that the word contiguous be deleted. The suggested comment has been adopted because contiguity is not part of the requirement for the filing of the two documents.

In response to comments, § 3833.2-3 was amended to make it clear that an official record of the notice or certificate of location is not needed. This amendment is consistent with other amendments made to the rulemaking. The amendment adding the word "legible" was also included in this section.

One of the comments on § 3833.2-3 raised the point that a situation can arise when those mining claims located on or before October 21, 1976, must be recorded simultaneously with the filing of either an affidavit of assessment or a notice of intent to hold and as a result no serial number would have been assigned prior to that time. This one time situation will be covered by an instruction memorandum to make sure that no affidavit of assessment or notice of intent to hold a mining claim is rejected for failure to furnish the serial number of the claim.

One comment suggested that § 3833.2-3(a)(v) be amended to make it clear that assessment work was not required by law. We agree and the section has been changed accordingly.

Section 3833.2-3 was amended to recognize that a pending petition for a deferment of assessment work if properly recorded with the local recording office is effective until acted on by the authorized officer. As a result of comments received relating to the wording of the parts of § 3833.2-3 on use of sites, the section has been amended to change the words "is being" to "will continue to be". This wording is more in keeping with the statutory requirement.

Finally, in § 3833.2-3, the suggestion that the words "discovery or" be inserted in paragraph (4) to make it clear that a tunnel site could be for discovery as well as development was adopted.

One of the comments on § 3833.4 pointed out that regulations cannot extend the time for recordation set by statute. This is correct. The last sentence of § 3833.4 has been deleted.

The Bureau of Land Management will continue to check recordation filings to determine if they meet the minimum requirements of the law and

the regulations. If the filing fails to meet the minimum requirements of the law and the regulations and there is sufficient time before the filing deadline to allow correction, the claimant will be notified of the deficiencies and requested to correct the deficiencies. If, however, a recordation filing fails to meet the requirements of the law and the regulations and there is insufficient time to allow correction of the deficiencies, the recording will be rejected. The Bureau of Land Management will, in those instances where it finds a recordation filing meets the minimum requirements of the law and the regulations, accept the filing for recording and contact the claimant for any additional information that might be desired.

Editorial and language changes needed to clarify the rulemaking have been made.

Under the authority of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

GUY R. MARTIN,
Assistant Secretary of the Interior.

FEBRUARY 9, 1979.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites.

Sec.

* * * * *

3833.2 Evidence of assessment work/notice of intention to hold claims, or site

* * * * *

3833.2-3 Form—notice of intention to hold claim or site.

* * * * *

§ 3833.0-3 Authority.

* * * * *

(e) The Act of August 31, 1951 (31 U.S.C. 483a) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

* * * * *

§ 3833.0-5 Definitions.

* * * * *

(e) "Owner" means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) "Federal lands" means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located.

(h) "Date of location" or "located" means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) "Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

* * * * *

§ 3833.1-2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, shall file (file shall mean being received and date stamped by the proper BLM office), on or before October 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

* * * * *

(c) * * *

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites located on surveyed or unsurveyed lands, a description shall be furnished. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim or site to within a 160 acre quadrant of the section (quarter section) or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

(7) In place of the requirements of (5) and (6) above, an approved mineral survey may be supplied.

(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(d) Each claim or site filed shall be accompanied by a one time $5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

§ 3833.1-3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which contains the documents and information required in § 3833.1-2 of this title, except if the application is for a patent for a placer claim which is located on surveyed lands and conforms to legal subdivisions, such applicant need not comply with the requirements of § 3833.1-2(c)(6) of this title, or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, files in the proper BLM office an application for a mineral patent, as described above, on or before October 22, 1979, the filing of the application shall be deemed full

compliance with the recordation requirements of section 314(b) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1. For purposes of complying with the requirement of § 3833.2-1(a) of this title, upon notification to the claimant, the date of recordation in the proper BLM office shall be October 21, 1976, for claims and sites included in mineral patent applications on file as of that date. The date on which the application was actually filed shall be the date of recordation for all other claims and sites.

* * * * *

§ 3833.2 Evidence of assessment work-notice of intention to hold a claim or site.

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(b) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 35 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims located in any unit of the National Park System.

(c) The owner of an unpatented mining claim located on Federal lands after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

§ 3833.2-2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment work performed which was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing of the notice or certificate of location or patent application in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

* * * * *

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) and filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

* * * * *

§ 3833.2-3 Form—notice intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(iv) A statement that the owner(s) intend to continue development of the claim; and

(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or

(2) The decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(b) A notice of intention to hold a mill or tunnel site(s) shall be in the form of a letter signed by the owner or owners of such sites or their agent setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(2) Any change in the mailing address, if known, of the owner or owners of the site(s); and

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independent mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of the vein or lode.

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

* * * * *

§ 3833.5 Effect of recording and filing.

* * * * *

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28). Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 of the Revised Statutes and with laws and regulations issued by any State or other authority relating to performance of annual assessment work.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings re-

quired by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR Part 3730, or as provided in § 3833.2-1(b) of this title.

(d) In the case of any action or contest affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 or filed a notice of transfer of interest pursuant to § 3833.3, shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to insure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with 43 CFR 4.450. Owners who have not recorded a claim or site or filed a notice of transfer shall not be personally served and will be bound by any contest proceeding even though they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, and shall apply to such claims or sites located on or before October 21, 1976, only after they have been recorded pursuant to § 3833.1-2 of this title.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

[FR Doc. 79-4797 Filed 2-13-79; 8:45 am]

Federal Register

WEDNESDAY, FEBRUARY 14, 1979

PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

FINANCIAL ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 114]

FINANCIAL ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

Proposed Rulemaking

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commissioner of Education proposes to amend the regulations that govern the award of Federal assistance to school districts that enroll certain categories of children receiving free public education in areas affected by Federal activities.

The amendments are designed to insure the safety of children who are educated on federally owned property, and to make certain that handicapped children have access to educational programs located on federally owned property.

DATES: Comments must be received on or before April 2, 1979.

ADDRESSES: Comments should be addressed to Mr. William L. Stormer, Office of Education, Room 2107-A, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Written comments received in response to this notice will be available for public inspection in the office indicated above on Mondays through Fridays between 8:30 a.m. and 4:00 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT:

William L. Stormer (202) 245-8427.

SUPPLEMENTARY INFORMATION:

BACKGROUND

LEGISLATIVE HISTORY

Section 10 of Pub. L. 81-815 provides for direct Federal construction of school facilities for children residing on Federal property. It was adopted to serve two situations where the Commissioner should take the responsibility to provide school facilities for children residing on Federal property:

Section 10(a)(1)—where State law precludes the expenditure of funds to educate children on Federal property.

Section 10(a)(2)—where the local educational agency (LEA) is unable to provide a suitable free public education for children residing on Federal property.

PRIORITY RANKING

Funding priorities for Section 10 were initiated to distribute limited funds. Groups for establishing priority in funding at present are as follows:

1. Repairs to existing Federally-owned school facilities for children's safety.
2. Upgrading for facility transfer where a local educational agency has assured the Commissioner that it will apply for and accept ownership of the Federaly-owned facilities.
3. Upgrading or new construction or both to provide facilities for unhoused students.
4. New construction, remodeling or rehabilitation necessary to permit the implementation of a contemporary education program.

AUTHORITY TO INITIATE STUDY

The Commissioner of Education directed the initiation of an in-depth study to analyze Section 10 school construction needs.

FINDINGS

The findings of the in-depth study projected a total cost estimate of $198,231,641 ($200 million) in FY 1976 dollars to repair, upgrade or construct school facilities to provide for contemporary educational programs. Construction estimates for upgrading existing facilities to meet life safety and handicapped access standards total approximately $10.5 million in 1976 dollars.

Estimates for construction of replacement facilities where upgrading is not sufficient to meet life safety standards total approximately $60 million in 1976 dollars.

For the purpose of this estimate, it is assumed that the responsible LEA is unable to provide a suitable free public education for the children concerned. A determination to this effect, of course, will be required prior to the initiation of any extensive remodeling or new construction.

The in-depth study disclosed many instances where existing school facilities are simply inadequate to house the total number of pupils enrolled. Large numbers of children are required to be housed in makeshift facilities, such as those that have been abandoned from the use they originally served.

Some of the pupil membership increases have resulted from Department of Defense programs to construct additional on-post military family housing units at an accelerated pace over the past several years, or from a change in the basic mission the installation serves.

The safety of children being educated in buildings under the Commissioner's cognizance is a first priorty. A portion of the construction needed to bring existing facilities up to life safety standards requires only repairs or upgrading activities. Construction can be performed which will meet life safety standards and achieve access for the handicapped equal to that called for by Section 504 of the Rehabilitation Act of 1973.

Certain Section 10 facilities, however, cannot be made life safe (i.e., old wooden buildings with an unacceptable "burn rate") and, therefore, construction of replacement facilities is required.

In these cases, the current priority system precludes the Commissioner from targeting money toward major renovation or new construction efforts.

AMENDMENTS TO THE REGULATIONS

Modification of the priorities, by regulation, of existing funding priority groupings to be promulgated are as follows:

1. Emergency repairs for the children's safety.
2. Upgrading and new construction to meet life safety and handicapped access standards.
3. Upgrading to provide facility transfers to local educational agencies.
4. Upgrading to provide facilities for unhoused children.
5. Upgrading and/or new construction to provide contemporary educational programs.

Criteria by which to judge "suitable free public education" and "ability to provide suitable free public education" have never been defined in the regulations or the law. Without established criteria and a revision of priorities, applicants cannot be sure of their eligibility status. These two proposed amendments will alleviate the present shortcoming.

This definition of suitable free public education is distinguished from the definition of "free appropriate public education" given in Section 602 (18) of the Education of the Handicapped Act. Although the definitions may have similar application to the situation of handicapped children in certain instances, the latter definition applies specifically to special education and related services.

The primary standard against which to measure an LEA's suitability will be that which is commonly provided in the State. The school attended by a pupil residing on Federal property must be within the State's established maximum commuting distance from that pupil's home.

The programs of instruction offered or which can be offered must meet minimum standards for State accreditation or approval. In the event a State has not established minimum educational requirements, the Com-

missioner then may apply appropriate accreditation associations standards to assess suitability of the LEA's program of instruction.

Examination will also be made of the ability of the LEA to provide suitable free public education, particularly as it applies to school construction. Operational indicators would be the percentage of the LEA's bonded indebtedness; the present level of debt service; and the amount of resources the LEA has, State, local and Federal, to provide minimum school facilities for the children to be housed.

The following changes are being made:

1. Under § 114.1 *Definitions.*

Add a new definition (a-1) "Ability to provide suitable free public education" before (a) "Act."

2. Add a new definition (x-1) "Suitable free public education" after (w) "Subpriority indices."

3. Under § 114.5 *Determination of priority indices and priority groupings for applications.*

Under subparagraph (b)(2) add a new item (ii) and change (ii) to (iii), (iii) to (iv), and (iv) to (v).

The new priority is as follows:

(ii) Applications in cases where upgrading or new construction or both is necessary to meet life safety and handicapped access standards.

These proposed rules deal only with specific amendments and will be recodified under Operation Common Sense early in 1979.

(Catalog of Federal Domestic Assistance Nos. 13.477, School Assistance in Federally Affected Areas—Construction)

Dated: December 1, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: February 7, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

PART 114—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

* * * * *

§ 114.1 Definitions.

As used in this part, the term:

(a-1) *Ability to provide a suitable free public education for the purposes of section 10 of the Act.* The Commissioner considers a local educational agency (LEA) able to provide a suitable free public education if the LEA—

(a) Has the authority under State law to provide suitable free public education to pupils residing on Federal property;

(b) Has not refused to provide that education;

(c) Has the authority to provide educational facilities on property it does not own where the LEA determines that the property is necessary to serve pupils residing on Federal property; and

(d) Has the actual or potential financial resources and/or facilities to provide that education.

* * * * *

(x-1) Free public education is considered "suitable" for purposes of Section 10 of the Act if—

(1) The primary language of instruction is English; and

(2) The school facility which a pupil attends or would attend is within the State's established maximum commuting distance from a pupil's home; and

(3) The programs of instruction offered or which can be offered with combined local, State, and Federal resources meet standards for State accreditation or approval. If the particular State has not established standards for accreditation or approval, the Commissioner applies appropriate accreditation associations' standards to assess suitability of the local educational agency's program of instruction; or

(4) In the judgment of the Commissioner, an arrangement under section 10 would operate, because of adverse social and political factors, to the serious detriment of the children to be served.

* * * * *

(20 U.S.C. 640(a)(2))

§ 114.5 Determination of priority indices and priority groupings for applications.

* * * * *

(b) For requests under section 10 of the Act, a priority index will be determined for the first pending requested project of each applicant by adding (1) the percentage that the estimated number of children for whom minimum school facilities are to be provided is of the total estimated number of all children residing and attending school on the installation at the close of the applicable period; and (2) the percentage of the estimated school membership at such installation which is without minimum school facilities as of the same time. However, in no case will the combined percentage used in determining the priority index exceed twice the percentage arrived at in subparagraph (1) of this paragraph. In determining the order of priority for approving applications under section 10, applications will be classified in priority groups for establishing priority in funding from funds allocated for applications under section 10 as prescribed in paragraph (c) of § 114.4 and a priority listing will be established for each such group in the following order: (i) Applications requesting major repairs necessary for the safety of school children or to prevent further deterioration of existing school facilities; (ii) applications in cases where upgrading or new construction or both is necessary to meet life safety and handicapped access standards; (iii) applications in cases where the local educational agency which operates the school program in school facilities located on Federal property has given assurance and a firm commitment to the Commissioner that, upon completion of the proposed project, it will accept ownership of such school facilities under section 10(b) of the Act; (iv) applications in cases where there are unhoused pupils; and (v) applications requesting the construction of capacity or noncapacity school facilities, or the rehabilitation or remodeling of existing school facilities which is required to bring the school facilities up to a standard which will permit the offering of a contemporary educational program.

(20 U.S.C. 640)

[FR Doc. 79-4871 Filed 2-13-79; 8:45 am]

Federal Register

WEDNESDAY, FEBRUARY 14, 1979

PART VI

INTERSTATE COMMERCE COMMISSION

■

UNIFORM SYSTEM OF ACCOUNTS

Branch Line Accounting System Report; Decision

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER C—ACCOUNTS REPORT AND RECORDS

[Docket No. 36366]

PART 1201—UNIFORM SYSTEM OF ACCOUNTS

Subpart B—Branch Line Accounting System Report

Decision

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Final Rule on Amendments to the Branch Line Accounting Report.

SUMMARY: On October 26, 1978 the Rail Services Planning Office (RSPO) published proposed amendments to the Branch Line Accounting System that would (1) replace the Branch Line Annual Report Form R-6 with a certification and (2) change the filing date from June 30 to March 31 of each year. RSPO is amending the regulations to adopt the certification to replace the current Form R-6 but the filing date for the certification will remain June 30. This change includes the Form R-6 that will be filed for data collected during 1978.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

James Wells, Chief, Cost Evaluation Branch, Rail Services Planning Office (202) 254-7552.

SUPPLEMENTARY INFORMATION: On October 26, 1978, the Rail Services Planning Office published proposed amendments that would eliminate the Annual Report of Railroad Branch Lines, Form R-6 and replace it with a certification that the proper data was being collected and maintained for all of the rail lines prescribed by the regulations. In addition, the proposed filing date of the certification was to be on or before March 31 instead of the current June 30 date.

Comments on the proposed changes were submitted by several state DOT's, individual railroads and the Association of American Railroads. All of the submissions agreed that the combined data submitted to the ICC in the Form R-6 was of little value. The states expressed concern over the availability of the data for individual branch lines as a result of the proposed amendments. The notice of proposed rulemaking stated withhout qualification that the proposed change only eliminated the process of combining the individual line data into a consolidated report. In addition, the notice said that the states' access to the data was not altered by the amendments that were being proposed. The certification will be filed for data collected during 1978.

The notice also proposed a change related to the filing date, for the certification, from June 30 to March 31 of each year. This proposed change will not be made. From the comments received, it appears that this would cause some confusion as to the availablility of individual line data subsequent to the submission of the certification. Therefore, RSPO has decided that the certification will be filed on or before June 30, the same date that the report Form R-6 had been due.

The AAR proposed that the burden on the railroads could be further relieved by not requiring them to maintain the data for every branch line at the level of detail called for by the regulations. The AAR's reasoning was that (1) the detailed data has not been requested for every line for which it is being maintained and (2) some states do not want the information at the level of detail required by the regulations. RSPO feels that many states have not requested the individual line data because their rail planning organizations are currently not at a level that allows them to evaluate information for every line within their state. However, as the amount of Federal money available to the states becomes less and decisions have to be made on which lines will continue in operation while others are abandoned, the need for more precise information will increase as well as the level of knowledge within the state DOT's. The level of detail that a state wishes to obtain from a railroad regarding the revenues and expenses of particular branch lines is a matter between the parties involved. However, the regulations will not be amended regarding the availability of the detailed data.

The certification that will be filed by the railroads beginning June 30, 1979 will be included in the regulations as Appendix I, Certification of Branch Line Accounting System Records. The other amendments to the regulations are technical changes which are necessary as a result of substituting the certification for the Form R-6.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Issued on February 5, 1979 by Alexander L. Morton, Director, Rail Services Planning Office.

By the Commission.

H. G. HOMME, Jr.
Secretary.

Part 1201, Subchapter C, Chapter X, title 49 Code of Federal Regulations is amended as follows:

§ 930 [Amended]

1. Section 930(a) is revised to read as follows: "(a) General. The railroad shall file on or before June 30 of each calendar year the certification included in these regulations as Appendix I. The railroad shall include a description of each branch line using the format set forth in Appendix I of these regulations. The description of each branch line requires the same data as that submitted under 49 CFR 1121.21. This section prescribes the branch line information required in conjunction with the system diagram maps specifying the line's designation, states and counties traversed, delineation of mileposts, and location of agency and terminal stations."

2. Section 930(b) is deleted.

§ 940 [Amended]

3. The first sentence of Section 940 is amended to read as follows: "This section specifies the format in which the data collected for each branch line shall be maintained."

§ 950 [Amended]

4. The first sentence of Section 950 is amended to read as follows: "This section defines each account outlines in the format shown under Section 940 of these regulations."

5. Appendix I, "Certification of Branch Line Accounting System Records" is incorporated into these regulations (end of Subpart B) in the format shown below.

APPENDIX I

CERTIFICATION OF BRANCH LINE ACCOUNTING SYSTEM RECORDS

Carrier:(Exact legal title or name of the respondent) ———————————

———————————

Name, title, telephone number and address of the person to be contacted:
Name ———————————
Title ———————————
Telephone Number: (Area Code) and (Telephone number) ———————————
Office Address: (Street and number) (City, State, and ZIP code) ———————————

———————————

CERTIFICATION

I, the undersigned, ———————————
of (Title of officer in charge of accounts) —

———————————

(Full name of reporting company) ———
certify that during the calendar year 19—— the branch line accounting system data were collected and maintained for each line that met the criteria set forth in 49 CFR

1201, Subpart B, Section 920(a), Lines For Which Data Collection Is Required, (Docket No. 36366).

Signature ————————

Date————

The lines covered by this certification are described below: (Describe each branch line separately using the following format as set forth in 49 CFR 1121.21.)

(a) Carrier's designation for line (Ex. Zanesville Secondary Track);

(b) State or states in which line is located;

(c) County or counties in which line is located;

(d) Milepost delineating each line or portion of line;

(e) Agency or terminal station(s) located on line or portion of line with milepost designations;

(f) Current category designation and date placed in that category; and

(g) Previous category.

[FR Doc. 79-5049 Filed 2-13-79; 11:37 am]

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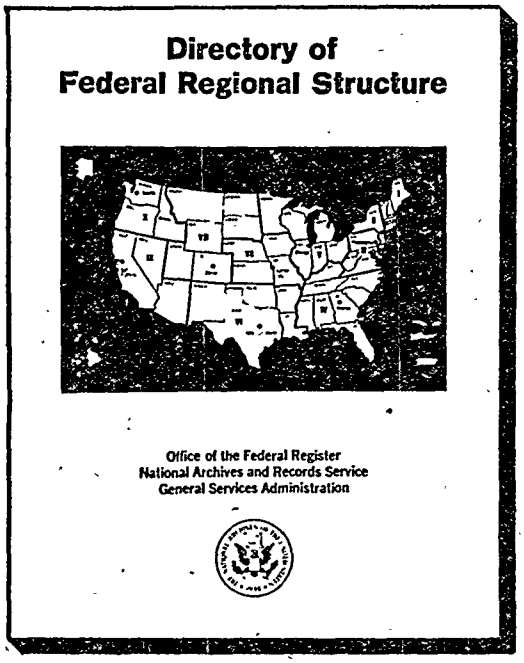

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[Revised as of May 1, 1978]

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